

MHSN110003212009



ORDER BELOW EXHIBIT 200
Regular Civil Suit No. 57/2009
(Chandrkant Mote Vs. Sahebrao Mote)

1. This is an application filed by the plaintiff under order 6 rule 17 of Code of Civil Procedure.
2. It is the contention of the plaintiff that, during the pendency of the suit, defendants have sold suit property Gat no. 53/2 to third person. Accordingly, it has necessary to make amendment and insert para 2-A in the plaint. The proposed para 2-A is reproduced as “ २-अ मौजे आटपाडी येथील गट नं. १८७ व ५३/२ हा वादी व प्रतिवादी यांचा वाडवडीलार्जित एकत्रीत कुटूंबाचा असून त्याची वहिवाट एकत्रीतपणे करत होते व आहेत. सदर मिळकतीस कुळ म्हणून वादीचे आजोबा विठोबा मोटे हे होते. त्यांचे पश्चात सदर मिळकतीस भिमराव याने सर्वाकरीता स्वतःचे नाव लावले परंतु सदर मिळकतीची देखभाल व वापर व उपभोग वादी प्रतिवादी हे समाईकात घेत होते व आहेत. सर्वांच्या संमतीने भिमराव यास कुळ कायदयाच्या केसेस चालविणेचा वादीचे वडील व चुलते यांनी अधिकार दिलेला होता. कारण भिमराव हा कर्ता होता व त्यांचेवर पूर्ण विश्वास होता व सर्व केसेससाठी लागणारा खर्च ही वादीचे वडील व चुलते देत होते व मधून अधून वादीचे वडील व चुलते येत जात होते व देखभाल करत होते. त्याचप्रमाणे भिमराव मयत झालेनंतर भिमरावचे पश्चात प्रतिवादी नं. १ व २ यांनी त्यांची बेकायदेशीर नावे गट नं. १८७ व ५३/२ ला लावून घेतली व त्याआधारे महसूल खात्याचे रेकॉर्ड स्वतःचे नावे करून घेतले. सदर मिळकतीचे नजराना रक्कम भरणेकरीता प्रतिवादी नं. १ व २ यांनी वादी व त्यांचे चुलते याचेकडून पैसे घेतले होते. रेकॉर्ड पूर्ण झालेनंतर तुम्हास सदर मिळकतीचे वाटप देतो असे सांगितले होते. परंतु, प्रतिवादी यांनी देणेचे नाकारले. त्यानंतर प्रतिवादी नं. १ व २ यांनी गट नं. ५३/२ मधील काही क्षेत्र दावा चालू असताना प्रतिवादी नं. १८ यांना बेकायदेशीर विक्री केली असून सदर दस्तास लिज

पेडन्सीची बाधा येते. त्यामुळे प्रतिवादी नं. १८ यांचा झालेला दसत हा मुलतः बेकायदेशीर असून वादीचे हिस्सेवर बंधनकारक नाही.

3. The proposed amendment is filed as the transaction was done during the pendency of the suit. The nature of the suit will not change. Hence, prayed to allow the application.

4. Defendant no. 18 has filed say below Exh. 202 and resisted the application. The contention of the defendant no 18 that, it is not formal amendment, it will change the nature of the suit. The plaintiff was having knowledge about the legal proceedings when the suit amended in the year 2023. The defendant has filed his written statement and on 02/12/2024, plaintiff has filed additional affidavit examination in chief below exhibit 195. Defendant no. 18 has partly cross examined plaintiff. The plaintiff has not mentioned any exceptional circumstances on which application can be allowed. The plaintiffs have given admissions in his cross-examination and thereafter the present application is filed to fill the lacuna. The intention of the plaintiff can be seen form this conduct. Hence, prayed to reject the application on cost.

5. Considering the rival contention on record following points arise for my determination and I have recorded my findings along with reasons thereon.

Sr. No.	Points	Findings
1.	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?	Partly Yes
2.	What Order ?	As per final Order...

REASONSFor Point no.1:-

6. Heard both the Ld. Advocates. I have gone through the pleadings and evidence on record. It is matter of record that, during pendency defendant no 1 and 2 have sold suit property to defendant no. 18. The plaintiff has filed application below exhibit 183 under Order 1 Rule 10 and only impleaded defendant no. 18 as party defendant. The plaintiff has not filed any amendment application as to how defendant no 18 is made party.

7. After filing written statement, plaintiff has filed his evidence and part cross examination is conducted. The plaintiff has mentioned in his evidence that, during pendency sale transaction is done and sale deed is not binding upon plaintiff etc. On perusal of cross-examination defendant no 18 has brought on record these omissions which are not pleaded. Thereafter the present application is filed by plaintiffs.

8. I have gone through the proposed para 2-A. So far

as the proposed amendment is concern, the facts which are mentioned from starting to " सामाईकात घेत होते व आहेत " is already pleaded by the plaintiff. So far as the facts from " सर्वांच्या संमतीने भिमराव यास कुळकाद्याच्या केसेस चालविण्याचे अधिकार..... till परंतू प्रतिवादी यांनी देण्याचे नाकारले " is concern it is in regard of defendant no. 1 and 2. It is pertinent to note here that, the matter was posted for final arguments after recording evidence of the both parties and thereafter defendant no. 1 and 2 have sold suit property and defendant no 18 was impleaded. So far as, the above mentioned facts in proposed para 2-A is concerned, the facts were well within the knowledge of plaintiff from the date of filing of the suit. In case the above mentioned amendment is allowed, the trial will restart again and opportunity has to granted to defendant no. 1 and 2 again. The plaintiff has not given any reasons or due diligence to consider the application at the stage of final arguments. Thus, in view of proviso of Order 6 Rule 17, it would not be just and proper to allow the above mentioned proposed amendment.

9. So far as, proposed amendment 2-A from " त्यानंतर प्रतिवादी क्र. १ व २ यांनी.....till बेकायदेशीर असून वार्दीचय्ा हिश्यावर बंधनकारक नाही " is concern it is a subsequent fact which has been occurred during the pendency of the suit. The plaintiff ought to have application for amendment of plaint at the time of application under order 1 Rule 10 o f CPC. The proposed amendment is not change the nature of the suit. On the other

hand will help the Court to adjudicate the matter on merits. The defendant no. 18 will not be prejudice for the reasons that he has already filed his written statement and has taken his legal defence and accordingly additional issues are also framed.

10. Considering all the above aspects, the proposed amendment deserves to be partly allowed so, I answer point no.1 as partly in affirmative and for point no.2 I pass following order.

ORDER

1. The application vide exh. 200 is partly allowed on cost of Rs. 1000/- to be given to the defendant no. 18 on or before next date.
2. The plaintiff is permitted to carry out the amendment only to the extent from " त्यानंतर प्रतिवादी क्र. १ व २ यांनी..... till बेकायदेशीर असून वार्दीच्या हिश्यावर बंधनकारक नाही " of para 2-A on next date and file the copy of amendment on same date.
3. The plaintiff and defendant no. 18 are directed to conduct the remaining cross examination of plaintiff immediately after complying the order without fail.
4. Plaintiff to bear cost in cause.

Date: 02/07/2025.

(R.B.Kulkarni)
Jt. Civil Judge Jr. Dn., Atpadi.

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R.C.S. No.57/ 2009
Exhibit No.-200

Certificate

I affirm that the contents of this P.D.F file order are same, word to word, as per the original order.

Name of the Stenographer - A. R. Jadhav
Court - Jt. CJJD and JMFC, Atpadi.
Date - 02.07.2025
Order signed by the
Presiding Officer on - 04/07/2025
Order uploaded on - 04/07/2025