

R.C.S. No.272/2019

Order below Exh.103

This application is filed for amendment of the plaint and addition of a party by the plaintiff. The say to this application is filed by defendant below Exh.107.

2. It is the case of the plaintiff that some properties as mentioned in the application are not brought on record inadvertently. The present suit is for partition. The property which is sought to be brought on record by this application is also joint family property of the parties and therefore, i.e. required to be brought on record. It is further submitted that during the pendency of the suit on 08.05.2023 defendant No.1 sold gat No.22/1/2 to Sushila Shelke. The same property is also joint family property. Therefore, the fact regarding the sale deed as well as the purchaser required to be brought on record, for the final adjudication of the controversy. Hence, he prayed to allow the application.

3. Defendant resisted the application on the ground that the application is filed with ulterior motive and for keeping the suit pending. Gat No. 22/1/1 is not the joint family property but, it is self acquired property of defendant No.2. Plaintiff is trying to prolong the suit by adding new parties. The fact about the pendency of the dispute between plaintiff, defendant no.2 and proposed defendant Sushila is known by the plaintiff prior to filing of the suit. The status of

the property is also known by the plaintiff prior to filing of the suit. Therefore, he has not added the same property in the suit. Defendant No.2 as per the compromise sold gat No.22/1/2 to Sushila . Plaintiff by taking benefit of this fact, tried to amend the suit which is actually not relevant for the fact in issue. Hence, he prayed to reject the application.

4. Heard advocate Shri Kulkarni for plaintiff and Shri More for the defendants. Perused application, say, plaint and written statement.

5. The suit is for partition and separate possession. It is submission of the plaintiff that gat No.22/1/2 is the joint family property of plaintiff and defendant. Therefore, it is required to brought on record. Defendant at this stage, denied the contention of the plaintiff about the jointness of the property. Considering the nature of the suit and the 7/12 extract filed in the sale deed No.1540/2023 of defendant Bharat, with proposed defendant Sushila, it sees that the amendment sought by the plaintiff is required to be brought on record. The fact about the amendment mentioned in the application is satisfactory. The plaintiff was having knowledge about the gat number 22/1/1, but he has failed to brought it on record at the time of filing of suit. Hence, the delay is to be compensated in terms of costs to be paid to the defendants.

6. On the contrary the present suit is not pending for the hearing or part heard. If the amendment is allowed there will be no prejudice to the defendant, on the contrary, if it is rejected then it will prejudice to the plaintiff. As regards addition of the parties, the proposed defendant I.e Sushila Shelke the purchaser of the Gat number mentioned in the application. As this suit is for partition after adding the same property in the suit, she is the necessary party to the suit and therefore, she has to be arrayed as defendant in the plaint. Hence, considering the above circumstances, the amendment is required to be allowed as prayed in the application and Hence, I pass the following order :

-: O R D E R :-

1. Application is allowed subject to costs of Rs.500/-.
2. Plaintiff is allowed to amend the plaint as regards the matter mentioned in the application.
3. Plaintiff is further allowed to add Sushila Dadasaheb Shelke as defendant No.13 as mentioned in the application.
4. Plaintiff to amend the suit on or before next date and file amended copy.

Date : 13.10.2023.

(M.R.Kamat.)
Jt. C.J.J.D. Pandharpur.