

ORDER BELOW EXH.87 IN RCS No.652/2022
(Passed on 01/10/2024)

This is application for amendment in plaint.

2. In short it is the case of plaintiff that the plaintiff has submitted a suit for partition and separate possession. The plaintiff has taken 7/12 extract and come to knowledge that defendant No.2 sold 80R land of out Survey No.49 to defendant No.6 to deprive right of plaintiff. Therefore, the sale deed is not binding on the share of plaintiff. Furthermore, from Survey No.49 a National Highway has gone. Therefore, a compensation amount is deposited with the competent authority at Solapur. Plaintiffs has right in partition in compensation amount. Defendant No.3 has submitted RCS No.1524/2016 for partition and separate possession that suit compromised on 08/04/2017 by way of compromise pursis. This fact came to knowledge of the plaintiff in August 2023. As per provision of Momedian Law during lifetime of father a son is not entitled for partition inspite of a compromise decree is took place. For that purpose, defendant No.3 has made collusion to proposed defendants No.7 to 10. Hence, compromise in that regard is necessary for just decision of the suit.

3. Defendants No.2 to 4 have submitted their say to this application that RCS No.1524/2016 is prior to the present suit. Its compromise is effected. The plaintiff and defendants are belonging to Muslim community, they are residing in

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Maharashtra in Solapur District at Bagewadi, Taluka-Malshiras. Therefore, they are governed by Hindu custom. Therefore, RCS No.1524/16 is compromised. Hence, the plaintiff is not entitled to claim an amendment. The plaintiff is not entitled to a claim relief regarding a share in National Highway compensation amount. Therefore, the present application may be rejected.

4. Defendant No.5 has given no objection to the application Exh.87.

5. Defendant No.6 has submitted his say to this application below Exh.95 that the suit is submitted for partition and separate possession. The suit property is belonging to father of plaintiff and defendant of defendant Kasim Chand Bagwan. He died on 31/12/1990. Thereafter, on 18/12/1992 Shakira Bagwan, Jarina Bagwan, Hasina Bagwan, Balam Bagwan have waived their rights in favour of defendants Elahi Bagwan, Raju Bagwan, Altaf Bagwan. Its mutation is effected against which plaintiff No.6 has submitted appeal to revenue authority for challenging the mutation entry. Defendant had submitted application under Order 7, Rule 11 of CPC as the suit is not within limitation but that application is rejected against which a writ petition is pending before Hon'ble Bombay High court. The plaintiff is not entitled to claim a share in the compensation amount before this court. Therefore, the application may be rejected.

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6. Defendants No.7 to 8 have submitted their say to this application below Exh.102 that the present application is submitted after commencement of trial. The plaintiff wants to challenge the sale deed. The suit is submitted on 01/01/2018. The plaintiff is in knowledge of the sale deed from 06/07/2000. Therefore, the plaintiff is not entitled to claim a relief by amendment after period of limitation. There is bar to claim a relief regarding a compromise decree of RCS No.1524/2016. This court has no jurisdiction to grant a relief regarding compensation in National Highway Act. Therefore, application may be rejected.

7. I have heard learned advocate of both sides. The suit is submitted for partition and separate possession. The suit is pending from 1st January, 2018. Issues are framed on 21/06/2021 below Exh.38. As per the contention made in the application on 06/07/2020 defendant No.2 executed sale deed in favour of defendant No.6 of 80R land of Survey No.49.

8. It is contention of plaintiff that, defendant No.3 by collusion with proposed defendants No.7 to 8 compromised RCS No. 1524/2016 by committing fraud and misleading the court. Therefore, that compromise decree is not binding on the plaintiff. The compromise took place on 08/04/2017. The plaintiff come to knowledge about compromise in August, 2023. Therefore, the compromise is not binding. On the other hand, learned advocate of defendants submits that, the sale deed dated 06/07/2020 and compromise of RCS 1524/2016

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are within knowledge of the plaintiff inspite of it he is not diligent. The proposed amendment is barred by Order 23 of CPC. Hence, application may be rejected.

9. The suit is for partition and separate possession. It is not disputed that on 06/07/2020 defendant No.2 executed sale deed of the suit property in favour of defendant No.6. So, after institution of suit this is subsequent took place. For that purpose immediately the plaintiff should have submit application but he has committed delay.

10. It is contention of plaintiff that compromise of RCS No.1524/2016 is took place by misleading the court and committing fraud. When there is allegations of committing fraud that required to be decided by competent civil court. Therefore, by this proposed amendment even though the suit is commenced for trial that do not barred the plaintiff to claim the relief of amendment because that amendment considering nature of the suit is necessary for just decision of the suit.

11. The plaintiff has claimed a share in a compensation in on land acquisition under National Highway Act. As per Section 3H of National High Way Act, when the competent authority referred the dispute to Principal Civil Court then that aspect regarding compensation will have to be decided by Principle Civil Court of that area. This court is not a Principal Civil Court for the area of Malshiras taluka. The

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Hon'ble District Judge is a Principal Court for the jurisdiction regarding 3H of National Highway Act. Therefore, the claim of proposed amendment regarding share in compensation amount is rejected. He has liberty to move before the competent authority for that purpose. Hence, in the result, I pass the following order:-

ORDER

1. The application is partly allowed. The plaintiff shall carry out amendment regarding the sale deed executed by defendant No.2 in favour of defendant No. 6 on 06/07/2020 and regarding a compromise of RCS No.1524/2016 the plaintiff is permitted to add proposed defendants No.7 to 8 in the suit as defendants on cost of Rs.3,000/-.
2. Cost be paid to defendants.
3. Rest of amendment application is rejected.

Date-01/10/2024.

Sd/-
(U.V.Joshi)
Civil Judge, Senior Division,
Malshiras.