

Regular Civil Suit No. 669/2022

Bhagwan Waghmode vs. Ramu Waghmode
CNR No. MHSO100023332022

ORDER BELOW EXH.54

This is application for amendment in plaint.

2. In short it is application that, the plaintiff has submitted suit for partition and separate possession and gift deed executed by defendant No. 1 in favour of defendant No. 9 is not binding on the share of the plaintiff. The plaintiff has not added Gat No. 118/1 area 60 R. and Gat No. 127 area 61 R., which are ancestral properties. Furthermore, Appa Sultana Waghmode and legal heirs of Sambhaji Sultana Waghmode are not on record. Furthermore, defendant No. 1 executed gift deed in favour of defendant No. 9. That gift deed is not binding on share of plaintiff. This amendment is necessary.
3. To this application, the defendants No. 1 to 3, 5, 6, 8 to 10 have submitted their say below Exh.62 that defendants have taken objection of non joinder of necessary parties and all properties are not brought in common hotch potch for partition. But, the plaintiff has submitted his evidence by way of affidavit on 18.12.2019. Therefore, there is commencement of trial. Hence, application may be rejected.
4. I have heard learned advocates of both sides. Learned advocate of plaintiff submits that, considering nature of the suit amendment in plaint is necessary. On the other hand, learned advocate of defendants submits that, trial of suit is commenced. Evidence of

plaintiff is on record. The plaintiff had opportunity to submit the application before the submission of written statement. After commencement of trial the plaintiff has no right to file the application. He is not due diligent as required by Order VI, Rule 17 of Code of Civil Procedure. The plaintiff has not mentioned a cause of delay to file the present application. Furthermore, the plaintiff wants to challenge the gift deed. A gift deed is executed 31.01.2018. The plaintiff wants to make amendment after a period of limitation. So, there is bar by limitation to challenge the gift deed.

5. I have perused the record of the suit. The suit is for partition and separate possession. The plaintiff has made averments in para No. 7 of the plaint that defendant No. 1 executed gift deed in favour of defendant No. 9 on 31.01.2018. The present suit is submitted on 15.06.2018. So, at this stage it is not necessary to make comment on period of limitation. A limitation is a mixed question of law and fact. It will be decided on merits. At this stage it will not be proper to throw the plaintiff from claiming the relief regarding a gift deed. So, there is no substance in the argument of learned advocate of defendants.
6. Record shows that, after commencement of trial the present application is submitted for amendment in plaint. The plaintiff has claimed that necessary parties be joined in the suit and the agricultural land be included in the suit for partition. This suit is for partition and separate possession. Considering the nature of the suit, if the present application is rejected, it will affect the rights of

both parties. Because for non joinder of necessary parties and not including all family properties in a suit for partition, on these grounds, there is possibility that suit will be dismissed. Therefore, for just and proper decision of the suit, amendment is necessary. When amendment is necessary for decision of the suit, in such circumstances, even though there is commencement of trial, such application is required to be allowed. The learned advocate of defendants submits that heavy costs may be imposed. As the plaintiff is not due diligent and at belated stage the present application is submitted and after amendment in plaint present defendants are required to submit amended written statement, in such circumstances, it will be just and proper to impose costs of Rs. 5,000/- to plaintiff. Hence, in the result, I pass the following order :-

ORDER

1. Application is allowed on costs of Rs. 5,000/- (Rupees Five Thousand Only). Costs be paid to defendants.

Place - Malshiras.
Date - 13/06/2023.

(**U. V. Joshi**)
Civil Judge Senior Division,
Malshiras.