

ORDER BELOW EXH.26 IN R.C.S. No.31/2015

The present application is filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint.

2. In short, it is the contention of the plaintiff that, the present suit is filed for redemption of mortgage. During the pendency of present suit, the defendant sold out the property to proposed defendant No.2 to 6. Therefore, it is necessary to add the proposed purchaser as the party to the suit and it is also necessary to claim the alternate relief of right of pre-emption. Therefore, prayed to allow the application and to add the contention regarding the sale-transaction, right of pre-emption. The proposed amendment will not changed the nature of suit and to avoid further complication, prayed to allow the application.

3 The defendant filed say at Exh.28 and opposed the application. It is his contention that, due to amendment the nature of suit will be changed. The relief will be changed which will amount to filing of suit. Hence, prayed to reject the application.

4 Heard both the parties. It is argued by Adv. Shri. R. M. Waghmode that, during pendency of the suit, the defendant No.1 sold out the land to the defendant No.2 to 4 and has also executed exchange-deed with the defendant No.5 and 6. Therefore, it is necessary to add the proposed defendant No.2 to 6. So as to decide the right of the parties and avoid multiplicity of the litigation. The amended pleading is based upon the transaction between the defendant No.1 to 6, and the relief sought is in alternative form which will not change the nature of suit. Hence, prayed to allow the application.

5 On the contrary, it is argued by Shri. G. P. Kadam for the defendant, that, the present suit is for redemption of mortgage. Right of pre-emption is not disputed in controversy. Due to amendment nature of suit will be change. If the transaction between the parties is proved to be illegal then, right of pre-emption does not arise. Hence, prayed to reject the application.

6. Upon hearing both the parties and perusing the pleading of the parties, the present suit is for redumption of mortgage. Now, by way of amendment, the plaintiff wants to brought on record the transaction made by the defendant in respect of suit property. It appears that, during the pendency of the suit, defendant No.1 sold out some of the property to defendant No.2 to 4 and also executed exchange-deed in favour of defendant No.5 and 6. As the transaction took place during the pendency of the suit, the plaintiff wants to insert the pleading about the same. If the pleading came to be inserted, no prejudice will cause to the defendant. The said transaction is necessary to be brought on record so as to minimize the litigation and the multiplicity of the proceedings. When, the defendant himself made transaction then, he cannot opposed to brought on record the said fact.

7. Further, though, the plaintiff has sought the relief of right of pre-emption, but, said relief is in alternative form. Therefore, it will not change the nature of the suit substantial. The suit will remained for redumption of mortgage only. Moreover, whether the plaintiff is having right of pre-mption or not will be decided in this suit itself and it will not caused prejudice to the defendant also. Therefore, the proposed amendment is necessary to decide the dispute between the parties.

8. Further, in present matter trial is yet not commenced. The defendant is having right to file the written statement as the transaction took place during the pendency of the suit, the proposed defendant No.2 to 6 are necessary to be added as parties to the suit as they are necessary parties. Hence, I pass following order.

Order

- 1 Application is allowed.
- 2 The plaintiff is directed to carry out the amendment within limitation and submit copy of amended plaint for the Court and defendant.
- 3 Defendant is at liberty to submit additional WS on amended portion only.
4. Concerned clerk is directed to take note of amendment in the suit register immediately.

(R. P. Kulkarni)

Date : 25.02.2016.

Jt. Civil Judge Junior Division, Malshiras.

Certificate

Case No.	:	R.C.S.No.31/2015
I affirm that, the contents of this PDF file – order is same word to word as per original order.		
Name of Steno	:	Shri. S. A. B. Shaikh
Name of Court	:	Civil Judge Jr. Dn. Malshiras
Date of order	:	25/02/16
Date of order signed by P.O.	:	26/02/16
Date of order uploaded	:	26/02/16