

ORDER BELOW EXH. 60 IN Spl. C. S. NO. 251/2022
(Rajendrakumar Shinde and Ors.Vs. Jayashri Shinde and Ors.)

[CNR No.MHSO12000721-2022]

The plaintiffs have filed present application for permission to amend in the suit. It is their contention that, during the pendency of the suit defendant no. 5 has executed gift deed in favour of his son Pravinkumar Shitaram Shinde on 11.07.2025 in respect of suit property Gat no. 227/2. So also, he has illegally sold suit property bearing no.527 to Dnyaneshwar Baban Pawar. Therefore, the plaintiffs want to implead Pravinkumar Shinde and Dnyaneshwar Pawar as party defendants no. 8 and 9 in the suit and to make consequential amendment accordingly. Hence, the application.

2) The Ld. advocate for defendant no. 1 has filed say on application itself and submitted that necessary orders be passed.

3) The defendants no.5 to 7 have filed say at exh. 67 and objected the application on the ground that, the application is not maintainable. The properties are legally transferred by the defendant no. 5. Those are his self acquired properties. Therefore, he has every right to transfer the same. The application is vague. Third party cannot be included in the partition suit. The plaintiff has right to file separate suit against proposed defendants no. 8 and 9. Defendant no. 9 is not the legal heir or co-sharer therefore, he cannot be impleaded in this suit. Lastly, they prayed that the

application be rejected.

4) Perused application and say thereon. Heard both sides. As per Order 6 Rule 17 of Code of Civil Procedure, 1908 every amendment necessary for determination of real controversy between the parties may be allowed at any stage of the suit. But, proviso appended to Rule 17 of CPC create an embargo to allow the application after commencement of the trial, unless the court comes to the conclusion that in spite of due diligence party to the suit could not raise the matter before commencement of trial. In the case on hand, issues are framed but the plaintiff has yet not led his evidence.

5) Now it is to be seen whether the amendment is necessary for determination of real controversy between the parties. On perusal of plaint, it is seen that, the plaintiffs have filed suit for partition and separate possession. According to the plaintiffs defendant no. 5 has transferred two suit properties by way of gift deed and sale deed in favour of proposed defendants no. 8 and 9 respectively during the pendency of suit and even though lis pendency has been registered by them. Said contention of the plaintiff is not denied by the defendants no. 5 to 7. It is yet to be decided whether the properties transferred by defendant no. 5 are his self acquired properties or not. Considering the nature of suit and reliefs claimed by the plaintiff, the amendment sought by plaintiffs is necessary to determine real controversy between the

parties. No prejudice will cause to the defendants, if application is allowed. As the defendants no. 5 to 7 have admitted fact of transfer of properties during pendency of suit, they are not entitled for costs. Hence, the following order.

ORDER

1. The application below Exh.60 is allowed.
2. The plaintiffs are permitted to carry out amendment in the plaint as prayed in the application at exh. 60 on or before next date.
3. The plaintiffs shall value the suit for new relief of declaration and pay proper court fees.

Date : 18/11/2025

(**Revati M. Kante**)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

- a) Name of the Stenographer : G.L.Sutar, Steno. Grade-2
- b) Court : Jt. C.J.S.D. and A.C.J.M.,
Barshi.
- c) Date of Judgment/Order : 18.11.2025
- d) Judgment/Order signed by
the Presiding Officer on : 18.11.2025
- e) Judgment/Order uploaded on : 19.11.2025