

ORDER BELOW EXH.116 IN R.C.S.NO. 664 of 2002
(PASSED ON 1st DAY OF JULY- 2015)

<i>Nivruti D Dhakne</i>	:::	<i>Plaintiff</i>
<i>Vs.</i>		
<i>Ahamand Sayyad (deceased)</i>	:::	<i>Defendants</i>

This is an application filed by the plaintiff vide Order VI Rule 17 and Order I Rule 10 of the Code of Civil Procedure, thereby sought to add the proposed defendants i.e. purchaser of the suit land of the defendants and to make consequential amendment in plaint. Perused application and say of the defendant. Heard both sides.

02] Plaintiff has filed suit against defendants for claiming possession of an encroached area and for *mesne* profit. The plaintiff has carried out pre-suit measurement. According to the plaintiff to violate his rights, defendant had sold out his own Gat No.69 admeasruing area 90 R to one Janak Prabhu Sangle i.e. proposed defendant, during pendency of the suit vide registered sale deed dated 27/09/2013. As the plaintiff got knowledge of the mutation entry the present application has been filed for addition of defendant, a necessary party to decide the right finally and to claim possession from the proposed defendant.

03] Defendant has not filed say. However, made argument claiming that the plaintiff has protection of Section 52 of the Transfer of Property Act. The possession can be received from the proposed defendant in execution proceeding through present defendants only. Thus, the execution of the decree, if any can be possible without making the proposed defendant as a party. Thus, application is not tenable and accordingly sought to reject the same.

04] Having heard both sides at length and having considered the stage of the proceeding and transaction taken place during pendency of the suit, their find necessity to add the proposed defendant, a necessary party to decide the rights of the parties finally.

05] No doubt there is protection of Section 52 of the Transfer of Property Act to the present plaintiff and plaintiff can claim possession from proposed defendant through the present defendant in execution proceeding for a decree, if any. However, present *lis* seen to have not been registered. Further defendant has not taken any permission from the Court for assignment of his right and possession to the proposed defendants. In these circumstances, to avoid multiplicity of the proceeding and to claim possession, addition of proposed defendant and his participation in trial appears to be necessary. No prejudice would be caused to the defendants, if such amendment is allowed and proposed defendant is made party. Having considered the same, application is allowed in following terms.

ORDER

01. Application is allowed as prayed for.
02. The proposed defendants be added as defendant No.7.
03. The plaintiff should carry out amendment as prayed within 14 days or on next date of the hearing and supply the copies of the amended plaint, failing to the order stands vacated without further reference of the Court.

Date: 01st July 2015.

(**Sudhir N. Shinde**)
Jt.Civil Judge, Junior Division,
Barshi.