

Order Below Exh.60 in R.C.S.No.86/2014

In a suit for partition and separate possession, plaintiff is seeking amendment in the plaint under O.6 R.17 of C.P.C. Defendant No.1 to 5 resisted the application by filing say at Exh.66. Perused documents. Heard.

2) It is plaintiff's case that, the suit properties are joint family properties of the parties in which she has right being sister of predecessor of defendant No.1 to 5. Defendant Nos.1 to 5 by filing Written Statement at Exh.39 contended that, the plaintiff has sold her share by executing sale-deed on 29/05/2002. Suit came to be filed on 13/11/2014. On this pretext, application for interim injunction was rejected. Issues are settled. Now plaintiff has proposed the amendment for incorporating Para No.3A in which it is averred that, sale dated 29/05/2002 is bogus, sham, without consideration and illegal. That the plaintiff is illiterate and never executed such sale-deed, it is also not acted upon. It is also proposed to be inserted that, on 02/04/2011, defendant No.1 moved application with the *Gav-Kamgar Talathi* to mutate plaintiff's name alongwith other heirs. According to the defendants, the amendment after thought and will change the nature of suit. So also it is proposed at belated stage.

3) Following points arose for my determination to which I record my findings alongwith the reasons to follow.

POINTS	FINDINGS
(1) Whether the proposed amendment is necessary for adjudicating the real controversy in dispute between the parties ?	No
(2) What order ?	As per final order.

REASONS

Point No.1 :-

4) I am well aware of the settled principle of law that, amendment should be allowed liberally. At the same time, it needs to be seen that, in view of amendment incorporated in the year 2002 in O.6 R.17, plaintiff shall show due diligence when amendment is proposed after the commencement of hearing. Issues are settled on 22/03/2017. Since some of the parties are senior citizens, trial is expedited. Thereafter, plaintiff sought time for filing her affidavit in lieu of examination-in-chief. Thereafter, this application is filed. Reason mentioned is that, the plaintiff is old aged lady and illiterate. Therefore, the portion proposed is not originally pleaded. I considered the reason. But it is to be seen that, application for interim injunction came to be rejected on 13/01/2015, in which it is observed specifically that, plaintiff executed the disputed sale-deed and also handed over the possession. At that time, plaintiff was well assisted with the legal expert. Since then also this amendment was not proposed. No reason is put forth for this inaction. Hence, at the outset it appears that, plaintiff has not shown satisfactory reason as to why she could not propose the amendment despite due diligence after commencement of trial.

5) As far as proposed amendment is concerned, real dispute is that, time and again defendant No.1 and 5 are contended that, the plaintiff has sold the suit property and in turn, she has no right, title and interest to seek partition. It is already observed *prima facie* that, the disputed sale-deed is registered document and executed on 29/05/2002. Despite that, plaintiff has not sought any relief in respect of these documents. What is proposed is mere averment that

the document is illegal. This averment is mere proposed to be mentioned in the body of plaint. In this context, such amendment will not serve the purpose. Unless and until, some finding is given on that registered document, real dispute cannot be resolved. Unless and until prayer is made, Court cannot give any finding upon that. Interestingly, it is also observed by my learned predecessor in an order below application for interim injunction that, plaintiff has not sought any relief as to this document. In that context, proposed amendment is not at all necessary, in the form in which is it sought. It will not help in any way in resolving real dispute. Hence, I answer this point in the negative.

Point No.2 :-

6) In view of above position, application is liable to be rejected. Hence order.

ORDER

- (1) Application is rejected.
- (2) Costs in cause.

Date : 11/07/2017.
Mahabaleshwar.

(P.A.Kumbhojkar)
Civil Judge, Junior Division,
Mahabaleshwar