

MHST160005082018



Order Below Exh. 38 in R.C.S. No.45/2018.
Passed on 23/09/2021
CNR N.MHST160005082018

This is an application filed by plaintiff for amendment of the plaint under Order 6 rule 17 of the Code of Civil Procedure (in short C.P.C).

2. The plaintiff submitted that, he has filed this suit for declaration of ownership, recovery of possession and perpetual injunction. After filling of this suit, the plaintiff discovered one document dated 13.07.1977 sent by Babu Jayram Dhiwar to the sub-divisional officer Mahabaleshwar. By sending this application, said Babu Dhiwar took objection to the proposed sale. This is the material document. Therefore, this fact as well as the document needs to be pleaded in the plaint. Therefore, the plaintiff has sought amendment in plaint so that he could plead this fact.

3. The defendant has filed say at Exh.39 and strongly resisted the application. The defendant submitted that, the application has been filed with intent to cause the delay in the proceeding. She submitted that, the application deserves to be rejected.

4. I heard Learned advocate for the plaintiff as well as learned advocate for the defendant. I perused the plaint. The plaintiffs have submitted that, the suit property was originally owned and possessed by Waghu Mahar. He had one son namely Jayram who is the Grandfather of the plaintiff No.1. Jayram had two sons namely Dadu and Babu. Dadu died in the year 2001. Babu is also died. Dadu had three sons namely Krushna (plaintiff No. 1), Vishnu (Died), and Suresh (Died). Plaintiff No. 1 is the son of Dadu and plaintiff No. 2 is the son of deceased Vishnu. The plaintiffs have submitted that, the father of plaintiff No. 1 namely Dadu and his uncle Babu had $\frac{1}{2}$ share each in the suit property. The name of Dadu was entered in the revenue record of suit property as a joint family manager in the year 1945. The plaintiffs further submitted that, they have undivided share in the suit property. However, the father of plaintiff No. 1 has sold suit property to the defendant in the year 1982 behind the back of plaintiff. He also submitted that, the defendant was serving in the 'Matralaya' and therefore she had undue influence upon the father of plaintiff No. 1. Therefore, the plaintiffs have filed the present suit for declaration that the sale deed executed by the father of plaintiff No.1 in favour of defendant is not binding upon the plaintiffs. They have also prayed for recovery of possession. The pleading clearly shows that the plaintiffs have challenged the alienation of suit property.

5. The proposed amendment shows that, the plaintiff is going to plead one fact that Babu Dhiwar had sent a letter to

the Sub-divisional officer Mahabaleshwar and took objection to the proposed alienation of the suit property. This is one of the fact to challenge the alienation. If the proposed amendment is allowed then the plaintiff can plead and prove this fact. At the same time, the defendant will get an opportunity to deny this fact or prove otherwise. The proposed amendment will not change the nature of pleading or the nature of suit. This amendment will be helpful to determine the real contravarcy between the parties. Therefore, the proposed amendment can be allowed. However, after filing of this suit and after decision on the temporary injunction application, the plaintiff has filed this application which shows that the delay has been caused by the plaintiffs. Therefore, the cost must be imposed upon them. Considering all these reasons, I proceed the pass the following order :-

ORDER

1. The application Exh. 38 is allowed subject to payment of cost of Rs. 500/- (Rs. Five hundred only) to the defendant as a condition precedent.
2. After payment of the cost, the plaintiff shall carry out the proposed amend and submit the amended copy within 15 days.

Date :23/09/2021

**(D.R.Mali.)
2nd Jt. Civil Judge .J. D. Wai**