

MHST160005082018



R.C.S. No. 45/2018
(Krushna Dhiwar & ors. Vs. Lalita Chavan)

Order below Exh.102
(Passed on 25th February, 2025)

This is an application filed by the plaintiffs for amendment in the plaint. The plaintiffs submitted that the present suit has been filed for declaration and perpetual injunction. Now, the matter has been fixed for additional evidence in respect of the additional issues. While going through the documents, it came to know that after the defendant's death, the names of her legal representatives i.e. her husband and sons have been mutated. Accordingly, the mutation entry No.773, 906, 5494 and 5128 have been taken. In respect of that, the amendment is required to be carried out.

2. The plaintiffs further submitted that the valuation clause is also to be amended. They further submitted that the new paragraph having contents regarding the aforesaid mutation entries is required to be added. They further want to amend the contents regarding cause of action in respect of the knowledge of mutation entries, as above. They also want to amend the prayer clause as they required to pray for the declaration that the mutation entries in the name of defendant No.2 to 4 by virtue of gift deed are not binding on them and as illegal. The plaintiffs further submitted that the proposed amendment is very necessary so as to determine the real question in controversy between the parties. If the proposed

amendment is not allowed, it will adversely affect the rights of the parties. Therefore, they prayed to allow the application.

3. The defendants have filed their say at Exh.106. However, it is submitted by them that defendant No.2 to 3 are legal representatives of defendant No.1. The original defendants have already transferred and alienated the suit property by virtue of gift deed. In fact, it was purchased by the original defendant for her issues. She has not created any right of third person and the proposed defendants are bound by the transaction entered by defendant No.1. The remaining part of the proposed amendment is all together not required. The suit has already been partly heard and thereafter as per order passed below Exh.99, additional issue was framed. The plaintiff is having burden to prove said issue. Still, the present application has been filed only with an ill-intention to prolong the matter and divert the attention from main grievance. Therefore, they prayed to reject the application by imposing compensatory cost of Rs.20,000/-.

4. The plaintiffs have filed written notes of argument at Exh.107. Thereby they submitted that the defendants have deliberately suppressed the fact of alienation during pendency of the suit in favour of the proposed defendant No.2 to 4. The transaction in favour of the defendant No.2 to 4 is hit by the principle of *lis pendence*. The proposed amendment will not change original nature of the suit.

5. On the other hand, Ld. Advocate for the defendants submitted that the proposed amendment is nothing, but an attempt to prolong the matter. The transactions entered by the defendant in

favour of the defendant No.2 to 4 are not affected by any legal provisions as the proposed defendants are the family members of original defendant No.1.

6. Perused the application and say alongwith the entire record. Heard both the sides, at length. Admittedly, the matter was already fixed for final argument. Even, the parties have started their final argument. It is also evident that vide order below Exh.99 an issue regarding sale-deed of the suit properties dtd. 14.06.1982 has been framed and the plaintiffs are having burden to prove it. Thereafter, the parties are again offered opportunity to lead evidence on this issue. Meantime, the plaintiffs have filed certain documents in support of their contention consisting 7/12 extracts and mutation entries. The bare perusal of these documents goes to show that these transactions are done while pendency of the suit. This is a suit for declaration and perpetual injunction. Considering this fact, I find the proposed amendment is necessary so as to decide the real controversy between the parties. I am also in agreement with the submission of the plaintiffs that it was the responsibility of defendant to disclose such subsequent transactions during the pendency of the suit. Therefore, it cannot be said that the plaintiff was not due diligent in bringing the proposed amendment on record earlier.

7. Admittedly, the matter was fixed for final argument and both the parties started their argument. However, if the fair opportunity is not given to the plaintiffs to put their case in a proper manner, it will definitely aversely affect their rights. In such circumstances, the present application deserves to be allowed by passing following order:

ORDER

1. The application (Exh.102) is hereby allowed.
2. The plaintiff to carry out the proposed amendment till next date by filing its amended copy on record.

[Dictated and pronounced in open Court.]

Date:- 25/02/2025

(R. M. Bhende)
Jt. Civil Judge, Jr. Dn., Wai