

ORDER BELOW EXH. 25 IN R.C.S. NO. 12/2021

(Pooja Jitendra Ghagre Vs. Tejrao Ganeshrao Hingawe & ors.)

The plaintiff has moved the present application for amendment of pleadings under Order VI Rule 17 of Code of Civil Procedure 1908.

2. She has contended that, the suit is filed for partition and separate possession. She has also contended that, the suit properties i.e. agricultural land No. 35 & 37 are the ancestral properties and in said agricultural lands, there is a house property. She has contended that, in present matter defendant No.1 to 5 have filed their written statement. The plaintiff prior to the suit had issued a notice dated 15/01/2021 and thereafter, had filed the suit on 08/04/2021.

3. The plaintiff has contended that, the defendant No.1 has executed sale deed of survey No. 35 in favour of defendant No. 5 i.e. Anil Govindrao Wanjari on 26/03/2021. She has further contended that, the fact of sale deed was revealed as per the written statement filed by the defendant No.1 and hence, she has contended that, there is need to do a necessary amendment as regard the sale deed and amendment regarding the prayer of sale deed. She has also contended that, proposed amendment will not cause any prejudice to the defendants. Hence, she prayed to allow the application.

4. The defendant No. 1 & 4 have filed say and contended that, the plaintiff was within the knowledge of sale

deed prior to the suit. Further, she has raised a objection over the mutation entry of sale deed, proceeding was conducted before the Tahsildar and order was passed on 24/06/2021 and objection of plaintiff was rejected. It is further contended that, the plaintiff has filed the suit during pendency of proceeding before Tahsildar and so she was very well within the knowledge of sale deed but have intentionally prolong the matter only with intent to harass the defendants. Hence, they prayed to reject the application.

5. The defendant No. 5 has filed say below Exh. 26. He has denied the entire contentions of application. Per contra, contended that, he has purchased the land survey No. 35 on 26/03/2021 and since then he is owner and possessor. Further, the plaintiff was having the knowledge of said sale deed and so the plaintiff has arrayed him as a defendant No. 5. Further, the plaintiff prayer regarding the sale deed is out of limitation. Considering all above aspects he prayed for rejection of application.

6. Considering the above said rival contentions of the parties following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	... Yes

2.	What order ?	... As per final order.

7. Perused the entire record, it reveals that, suit is for partition, separate possession. Further, record shows that, suit is filed on 06/04/2021. The defendant No.1 & 4 have file their written statement below Exh. 10 on 04/12/2021. From the record, it is evident that, initially the suit was filed against defendant No.1 to 4 and subsequently the defendant No. 5 was impleaded as per order dated 26/07/2022. Further, record shows that, the defendant No.1 & 4 in their written statement dated 04/12/2021 have come with the case that, the defendant No.1 vide sale deed dated 26/03/2021 has sold the land to Anil Govindrao Wanjari.

8. The defendant No.1 & 4, 5 by way of their say are contending that, the plaintiff was within the knowledge of sale deed as she has raised the objection before the Tahsildar, proceeding was conducted before the Tahsildar and her objection was rejected. After considering the rival contentions of the parties, it seems that, the sale deed is of 26/03/2021 and the present application is moved on 20/02/2024. The defendants have not filed any documentary evidence as regards the proceeding before Tahsildar. Though, for a while it is assumed that, the plaintiff was within the knowledge of sale deed at the

time of filing suit but still said aspect can not be a ground for rejection of application. Further, it seems that, the plaintiff after the sale deed has moved the application within the period of 3 years and so at this juncture, application can not be rejected on the point of limitation.

9. The suit is for partition and separate possession. The plaintiff by way of suit is contending that, she has right and interest in the suit properties. Admittedly, the sale deed is executed as regards survey No. 35 which is a suit property. From the record it reveals that, as per W.S. dated 04/12/2021, the defendant No.1 & 4 have contended regarding said sale deed and thereafter, the present application is moved after the period of two years. Considering the nature of suit, nature of proposed amendment, I hold that, for complete adjudication of the dispute on its own merits the proposed amendment is necessary, this will not cause any prejudice to the defendants. Further, the defendants can be compensated for the delay by imposing cost upon the plaintiff.

10. So considering the nature of the dispute I am of the opinion that, proposed amendment is necessary for the purpose of determining real controversy between the parties. Hence, I answer point no.1 in the affirmative. Considering all above aspects I proceed to pass the following order.

ORDER

1. Application (Exh. 25) is allowed subject to cost of Rs. 500/- payable to defendant No.1, 4 & 5.
2. Plaintiff is permitted to carry out necessary amendment in the plaint and file amended copy of plaint within stipulated period.

Karanja (Gha.)

Date:- 02/08/2024

(V.S. Wagh)

Civil Judge, Jr.Division,
Karanja (Gha.), Dist. Wardha.