

Order on application, exh. 18 in R.C.S. No. 68/2017
(dated 31/08/2017)

01] The plaintiff filed this application under O.I. R.10, O.VI R. 17, read with sec.151 of the Code of Civil Procedure [hereinafter referred to as 'the Code']

02] He contends that, defendant no.03 returned summons with letter that, department is not responsible for working of Samruddhi Express Highway, Nagpur to Mumbai. Hence, it is necessary to delete defendant no.03. And in place of it, department working on Samruddhi Express Highway is to be joined.

03] Suit for declaration of title, for cancellation of sale-deed, perpetual injunction, possession and damages, bearing RCS No.28/2004, is pending on file of Civil Judge Junior Division, Malegaon. That suit is filed against Kishor Dattatray Naik, Ravi Uddhavrao Raut, Vaibhav @ Vishal Uddhavrao Raut and Uddhavrao Mahadevrao Mule. In that suit, present plaintiff has pleaded that, these above-mentioned defendants prepared false fabricated sale-deed, without any right. Till final adjudication of that suit, title of purchaser can-not be confirmed. The defendants in that suit are necessary parties in this suit also. Hence, the plaintiff wants to add them as defendant nos. 04 to 07 in this suit.

04] Unless those persons are joined as defendants, this suit can not be adjudicated properly and finally. If they have made party to this suit, they will get opportunity to defend claim of the plaintiff. This suit will be decided on merits. The plaintiff, along-with deletion and addition of

parties, wants to amend pleadings in plaint, exh.01 and application, exh.05, with the prayer clause. Therefore, his application, may be allowed.

05] Defendant nos.01 to 03 are served with summons. But only defendant no.02 is appeared. His say was called. He has not filed say to this application.

06] Perused the record.

07] See order below application, exh.05, dated 15/05/2017.

08] Also see letter,exh.17 of present defendant no.03.

09] In view of letter, exh.17, present defendant no.03 is not concerned with subject matter in this suit. Hence, it should not be unnecessarily compelled to participate in litigation. Even such exercise will be futile. Instead, as the suit is for perpetual and mandatory injunction against proposed acquisition of suit land for construction of Samruddhi Express High-way, concerned authority of that project is necessary and proper party. In such situation, substitution of present defendant no.03 by new defendant no.03 can be allowed.

10] The plaintiff also want to add defendant nos. 04 to 07 and certain pleading about legal heirship, about inheritance of property by his father, about plaintiff's alleged right in the suit property, about transfer of suit property by Kishor, about explanation of effect of pendency of suit against

proposed defendant nos.04 to 07, before Court at Malegaon, about his apprehension that, sale-deed of suit land will be executed by proposed defendant nos. 04 to 07, in favour of proposed defendant no.03, about disbursement of compensation amount to proposed defendant nos.04 to 07 and other pleadings about relief of perpetual injunction.

11] The plaintiff filed application, exh.05 with prayer of ad-interim injunction against present defendants. In order, of 15/05/2017, on application, exh.05, it was observed that,

“(02) From plain reading of plaint, it is prima facie seen that, in 1959 certain share was transferred to brother of the plaintiff, namely, Kishor. Suit property is shown as 6 H. 94 R. of Gut no. 224. Out of that, as per pleading of the plaintiff himself, 2 H. 69 R. land is sold to Ravi Uddhaorao Raut on 29/05/2003. 2 H. 43 R. land is sold to Uddhaorao Mahadeorao Mule on 04/07/2000. And some portion of suit land is transferred in favour of Vaibhav alias Vishal s/o. Uddhaorao Raut. All these transfers are by way of registered sale-deeds. Two of them are under challenge before Civil Judge Junior Division, Malegaon. Now 3 H. 08 R. land, out of above mentioned suit land is going to be acquired by defendant nos.02 and 03; obviously from present owners, i.e. Ravi Uddhaorao Raut, Uddhavrao Mahadeorao Raut and Vaibhav alias Vishal s/o. Uddhaorao Raut. Still the plaintiff has filed this suit for perpetual and Mandatory injunction. He has also prayed for ad-interim ex-parte injunction against the defendants in respect of execution of sale-deed for proposed acquisition and also in respect of disbursement of compensation amount.

(03) Brother of the plaintiff, Kishor, after-wards purchasers of suit property i.e. Ravi Uddhaorao Raut, Uddaorao Mahadeorao Mule and Vaibhav alias Vishal s/o Uddhaorao Raut are not party to this suit. ”

12] In the light of these observations, now the plaintiff wants to add proposed defendant nos.04 to 07. And he also wants to amend his pleadings. It is not the case of the plaintiff, that he came to know about these proposed parties, in view of some recent subsequent development. Similar is the case about proposed amendment. It can also be said that, by this amendment, the plaintiff wants to make base for adducing evidence in respect of transfer of suit property, It will, certainly, amount to filling up of lacuna.

13] But, at the same time, as suit is at very preliminary stage of appearance of defendants, for just decision of it, proposed amendment can be allowed, in the interest of justice. Hence, the order :-

ORDER

Application, exh. 18 allowed, subject to cost of Rs.100/- (Rs. One Hundred only) to be deposited in the court, by the plaintiff.

- 2] Present defendant no.03 be deleted.
- 3] Executive Engineer of MSRDC for Samruddhi Express Way Nagpur to Mumbai, Officer at Collector, Washim, Taluka and District Washim be added as defendant no.03.

- 4] Kishor Dattatray Naik, Ravi Uddhavrao Raut, Vaibhav @ Vishal Uddhavrao Raut, and Uddhavrao Madhavrao Mule, with all their required details, such as age, occupation, address, etc. be added as defendant nos.04 to 07, respectively.
- 5] Proposed amendment of para 5-A, in plaint, exh.01 and in application, exh.05, is allowed.
- 6] The plaintiff is directed to carry out all these, deletion, addition of the parties and amendment, within stipulated time.
- 7] If the plaintiff fails to do so, within stipulated time, for whatsoever reason, necessary order will follow.
- 8] The plaintiff shall take note of this order.

Sd/-

Dated: 31.08.2017

(S.N. Shah),
Civil Judge (Sr. Dn.), Washim

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/
Order are same word to word, as per the original Order.

Name of the Stenographer :- G. P. Gaikwad, Stenographer(LG)

Court Name :- Civil Judge (Sr.Dn.), Washim

Date :- 31/08/2017

Order signed by the Presiding Officer on :- 31/08/2017

Order uploaded on :- 05/09/2017