

**ORDER PASSED BELOW EXH.24 IN Spl.C.S. No.72/2022**

(CNR No. MHWS02000744-2022)

Shila Ashok Varhade and Others Vrs. Adityakumar Hukumchand Walali +1

The plaintiff has filed this application under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short 'C.P.C.') for amendment of the plaint.

2. **Contents of this application, in nutshell, are as**

**infra**:- It is contention of the plaintiff that he has filed the suit for Specific Performance of Contract against defendants. During pendency of the suit defendant No.1 and 2 has sold land admeasuring 0H 79R from Gat No.198 of village Shelu Khu., Tq. & Dist. Washim to Mr. Nandkishor Laxminarayan Somani, Mr. Nitin Badrinarayan Chavan, Mr. Kamesh Chandulal Agrawal for consideration of Rs.39,61,000/- on 04/10/2022 vide sale-deed duly registered in the office of Sub-Registrar, Washim at serial No.4881/2022. As per the alleged sale-deed, the subsequent transferee are put in possession of the suit property and now therefore, they are necessary party to the suit. Therefore, plaintiff has prayed to amend the suit by adding subsequent transferee as defendant No.3 to 5 in this suit as they are described in the application alongwith their addresses mentioned in the application. Also, plaintiff has prayed to amend the title of the suit as per the words described in the application.

3. Plaintiff has prayed to add after para-11, para-11-A, after para-13 the sentence described in the application, in para-14, the sentence described in the application in the end of para-14, in para-17 prayer clause as described in the application be added in

the plaint.

4. Plaintiff has further contended that the facts to be amended in the plaint have been occurred during pendency of the suit. The amendment in the suit is necessary to resolve the real dispute between the parties. Accordingly, plaintiff has prayed for amendment in the plaint.

5. As the suit against defendants proceeded *ex-parte*, there is no say to this application on their behalf.

6. Heard Ld.Adv. G.V. Biyani for plaintiffs.

7. Ld. Advocate for the plaintiff has submitted that the proposed amendment is necessary to determine real question in controversy between parties to the suit & therefore, this application be allowed.

8. Before proceeding any further, I shall at the threshold mention that the proviso appended to Order 6 Rule 17 of the C.P.C. prevents an application for amendment of pleadings from being allowed after commencement of the trial, unless the Court is satisfied that in spite of due diligence, the party could not have raised the matter before commencement of the trial.

9. During pendency of the trial defendant No.1 and 2 have sold the land admeasuring 0H 79R from Gat No.198 of village Shelu Khu., Tq. & Dist. Washim to Mr. Nandkishor Laxminarayan Somani, Mr. Nitin Badrinarayan Chavan, Mr. Kamesh Chandulal Agrawal for consideration of Rs.39,61,000/- on 04/10/2022 vide sale-deed duly registered in the office of Sub-

Registrar, Washim at serial No.4881/2022. Hence, the subsequent transferee's described in the application by the plaintiff are necessary parties to the suit. Here, I would like to mention that it is well settled principle of the law that if the proposed amendment is necessary to determine real question in controversy between parties to the suit, it is necessary to be allowed. In my considered view, the proposed amendment is necessary to determine real question in controversy between parties to the suit. Besides this, I would like to mention that the proposed amendment relates to subsequent event & therefore, the plaintiff is not supposed to prove that in spite of due diligence, she could not have raised the matter before commencement of the trial. In the result, I have no hindrance to hold that this application deserves to be allowed. With this, I proceed to pass following order-

**ORDER**

- 1) Application Exh.24 is allowed.
- 2) The plaintiff shall carry out the necessary amendment, more particularly described in an application Exh.24 itself, till next date, and shall supply copies of the amended plaint as early as possible.
- 3) No order as to costs.
- 4) Parties to the suit shall take note of this order.

Washim.  
Date : 03/05/2023.

( M.T.Thaware )  
3<sup>rd</sup> Jt. Civil Judge (Sr.Dn.),  
**Washim.**

**C E R T I F I C A T E**

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

Name of the Stenographer :	D.V. Daware, Stenographer Grade-III
Name of the Court :	3 <sup>rd</sup> Jt. C.J.S.D.Washim
Date :	03.05.2023
Order signed by the presiding officer on :	03.05.2023
Order uploaded on :	04.05.2023