

ORDER BELOW EXH.39

1. Present application filed by the original defendant for the amendment in their counterclaim as per order 6 rule 17 r/w sec.151 of C.P.C.
2. It is contention of the original defendant that original plaintiff filed suit for injunction of the suit land on the basis of sale deed dtd.19/12/2014. The original defendant filed their W.S and counterclaim and challenged the validity of sale deed dtd.19/12/2014 and their counterclaim with respect to declaration of cancellation of said sale deed. The original defendant further submitted that, they due to inadvertent fail to made party to Vinaykumar Chandramani Padghan. Original defendant only propose to amend title of counterclaim by impleading Vinaykumar as counterclaim defendant no.2 and original plaintiff as counterclaim defendant no.1.
3. The application opposed original plaintiff by filing say and specifically raised objection original defendant willfully prolong the matter by filing present application. Already original plaintiff argued on Exh.5. The present application only filed with intention to delay the proceeding and prayed to reject the application.
4. Perused the record, application and say filed by the original plaintiff. Heard, learned advocate for the original defendant and original plaintiff.
5. On perusal of counterclaim of the original defendant. It reveals that, the original defendant specifically challenged and prayed for cancellation of sale deed dtd.19/12/2014. The said sale deed was executed in between original plaintiff and Vinaykumar. Therefore, I am of the opinion that, considering the nature of counterclaim, Vinaykumar is a necessary party to the counterclaim. As regard to the proposed amendment is concerned, the original defendant only one amend heading of counterclaim and to implead

Vinaykumar as counterclaim defendant no.2. Presently the suit is for hearing of temporary injunction application. Therefore, considering the nature of amendment and stage of suit I am of the opinion that no prejudice will be caused to original plaintiff if the application is allowed but if the application is rejected then certainly it will lead to multiplicity of proceeding. As regard to the delay is concerned then it can be compensated by imposing costs. Therefore, the above discussion lead me to pass following order.

ORDER

1. The application is allowed subject to costs of Rs.700/- to be paid to the original plaintiff on or before next date.
2. The original defendant shall carry out the amendment within stipulated time and file fresh amended copy of counterclaim.

Dt:-11/7/2017

(R.V.Sapate)
Civild Judge Jr.Dn.,Mangrulpur