

MHWS100004412023 	ORDER BELOW EXH.22 IN RCS NO.16/2023 Rajeshwar Parashram Gudade //Vs.// Parashram Duryabhan Gudade Passed on 13th March, 2025
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01. By filling this application, the plaintiff craves to add the purchaser of the suit property as a defendant No.4 and amendment in the pleading accordingly.

02. It is the contention of the plaintiff that, this is the suit for partition and separate possession. During pendency, defendant No.3 Sharada Kishor Patil alienated the suit property to one has transferred suit property i.e 0.91 R land out of Gut No.70 in favour of one Sarita Kishor Chaware by executing sale deed No.1351/2024 dated 08.05.2024. As the suit is for partition and separate possession, in order to avoid the further multiplicity of the litigation, purchaser needs to be add as a defendant No.4. On 15.05.2024 defendant No.1 executed gift deed in favour of defendant No.2 by executing registered gift deed document No.1419. The said document is also void ab initio. The said property was a joint family property. Defendant No.2 executed sale deed in favour of defendant No.3. Thereafter, defendant No.3 executed sale deed in favour of defendant No.4. Therefore, the application needs to be allowed and the purchaser needs to be arrayed as a defendant No.4 and also amendment accordingly. The para No.4A is necessary proposed amendment. In view of the alienation, the proposed amendment needs to be allowed. If the amendment is allowed then it will not change the nature of the suit.

03. The purchaser has filed say overleaf of the application and submitted that, the suit is denied for want of knowledge. The execution of sale deed is not disputed. It is specifically submitted that, the instant party is neither necessary nor proper party to the suit. The contents of the application is denied for want of knowledge. Hence, prayed to reject the application.

04. Heard both sides. Considering the application, say and submission, the following points arise for determination. I have given findings thereon with the reasons ensued thereon:

Sr.No.	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS</u>
1	Whether application for addition of party and amendment deserves to be allowed ?	Yes
2	What order?	As per final order

REASONS

AS TO POINT NO.1 :-

05. The plaintiff has filed sale deed bearing No.1351/2024 below list of document Exh.25. The alleged sale deed has been executed by defendant No.3 in favour of purchaser namely Sarita Kishor Chaware. It is the sale deed dated 08.05.2024. On perusal of the record it appears that, the sale deed has been executed after the appearance of defendant No.3 in the present suit. The part of the suit property has been alienated during pendency of the litigation. Defendant No.3 has knowledge of the institution of the suit. The purchaser in her say submitted that, she has no knowledge of the pending suit. It is settled law that the purchaser is bound by the decree. Though, the purchaser is bound by the decree, there is no bar

to implead her as a defendant.

06. Further, plaintiff has claimed share in the suit property being Joint Family Property. In **Yogesh Goyanka Vs Govind and others, 2024 Live law (SC) 457** wherein Hon'ble Supreme Court held that :-

“Doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction Court may pass thereunder”

07. In this case, purchaser has denied the notice of pending litigation but the nature of the suit propels to add the purchaser as a party. In **Yogesh Goyanka (Supra)** it was also held that :-

“Permitting the impleadment of a transferee pendente lite is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests especially when the transferor fails to defend the suit or where there is a possibility of collusion.”

08. Therefore, opportunity to defend the suit needs to be given to the proposed defendant to avoid the further multiplicity of the litigation. Thus, purchaser is the necessary party being the nature of the suit. Hence, in the facts and circumstances of the case, the purchaser Sarita Kishor Chaware needs to be added as a defendant No.4 in the present suit. Further, plaintiff also prayed for necessary amendment in respect of alleged alienation. The trial is not commenced. The amendment is bonafide in nature. If the amendment is allowed then no prejudice would be caused to the defendants. Hence, I answer to issue No.1 in affirmative. In answer

to point No.2, the following order is passed :-

-: ORDER :-

- 1 Application is allowed.
- 2 Permission is granted to the plaintiff to add the purchaser Sarita Kishor Chaware as a defendant No.4 and to carry out the amendment accordingly within the prescribed time from the date of this order.

(Dictated and pronounced in the open Court)

Place : Malegaon
Date : 13.03.2025

[Pravin U.Kulkarni]
Jt. Civil Judge (J.D.) Malegaon
Dist. Washim.

<u>CERTIFICATE</u>			
I affirm that, contents of this PDF file is same word to word, as per original Order :-			
1	Name of the Stenographer	:-	Shri. Shivam B. Patange (LG)
2	Court Name	:-	Jt. C.J.J.D. & J.M.F.C., Malegaon
3	Date of Order		13.03.2025
4	Date of Dictation	:-	13.03.2025
5	Date of Transcription	:-	13.03.2025
6	Date of Checking	:-	15.03.2025
7	Date of Signature	:-	15.03.2025
8	Date of Uploading	:-	15.03.2025