

ORDER BELOW EXH.14

(Passed on 5th day of January, 2024)

1 Present application filed by plaintiff under Order 1 Rule 10 alongwith Order 6 Rule 17 of C.P.C. Learned counsel for defendant filed their say on the application and opposed.

2 From the rival contentions of both parties, following points arise for my determination and I have recorded my findings thereon for the reasons mentioned below:

<u>Points</u>	<u>Findings</u>
1) Whether proposed party is necessary or proper party?	In affirmative.
2) Are plaintiffs entitled for the relief of addition of parties under Order 1 Rule 10 of C.P.C.?	In affirmative.
3) Whether proposed amendment changes nature of suit?	In negative.
4) Is application under Order 6 Rule 17 of CP.C. maintainable?	Yes.
5) What order?	As per final order.

Reasons

3 Heard learned counsels for both parties. Counsel for plaintiffs submitted that plaintiffs have filed suit for specific

performance of contract and permanent injunction against defendant. During the pendency of this suit, defendant has sold suit property to one Salma Bano. Now she is in preparation to mutate suit property in her name, though the suit property is in possession of plaintiffs vide agreement to sell dated 26/06/2019. Now defendant and proposed party who are the purchasers during pendency of suit are trying to create obstruction in the possession of plaintiffs, therefore it is required to add new purchaser as defendant in the suit as well as plaintiffs want to amend suit by praying declaration that the sale-deed executed in favour of proposed party is not binding upon plaintiffs and permanent injunction against them. Also he submitted that proposed party is necessary party to adjudicate matter effectively and proposed amendment does not change nature of suit. While learned counsel for defendant submitted that present suit is filed against minor through guardian who is father of said minor. Now said minor has become major and he has sold his property to Salma Bano. Also possession has been transferred to her. Now Salma Bano is in the possession of suit property. The allegations made in the application is imaginary and baseless, hence application be rejected.

As to point No.1:-

4 After perusal of record, it appears that plaintiffs have filed suit against Shaikh Shakeb Shaikh Kayyum, who is minor through guardian Shaikh Kayyum Shaikh Shadulla (father) for

the relief of specific performance of contract and permanent injunction. Now according to plaintiffs, the suit property has been sold by the defendant during the pendency of suit to one Slama Bano therefore she is necessary party. In support plaintiffs have filed copy of sale-deed dated 27/10/2023 vide Exh.16. It shows that Shakeb Kayyum Shaikh has sold suit property to Salma Bano Abdul Kadar Isani by virtue of registered sale-deed dated 27/10/2023. Present suit has been filed on 04/02/2023. It clearly shows that during the pendency of suit defendant has transferred suit property to third person. So, considering the nature of suit, it appears that now purchaser Salma Bano is the necessary party to the suit. Hence, I answer this point in **affirmative**.

As to point No.2:-

5 As discussed in the earlier point, that new purchaser of the suit property is necessary party, it is required to add her as a defendant in the suit. Without adding her as party to the suit, it will be difficult to adjudicate matter effectively. Hence, plaintiffs are entitled for the relief of addition of party under Order 1 Rule 10 of C.P.C. and I answer this point in **affirmative**.

As to point No.3:-

6 Through this application, plaintiffs want to amend the plaint. After going through the contents of the application, it appears that plaintiffs want to plead in respect of new transaction

of suit property. Also they want to claim declaration regarding transaction dated 27/10/2023 and injunction against proposed party for restraining them from creating obstruction in the possession of the plaintiffs. From the nature of suit and contentions of the application regarding amendment, it does not appear that proposed amendment changes nature of suit. Hence, I answer this point in **negative**.

As to point No.4:-

7 Record shows that yet the issues have not framed in this matter, therefore trial has not been commenced and present application has been filed before the commencement of trial. As well as proposed amendment does not change nature of suit, therefore plaintiffs are entitled for the relief of amendment in the plaint under Order 6 Rule 17 of C.P.C. Accordingly, I answer this point in **affirmative**.

As to point No.5:-

8 In view of discussion as to point Nos.1 to 4, I proceed to pass following order.

Order

- 1) Application stands allowed.
- 2) Plaintiffs are directed to add proposed party as a defendant No.2 in the suit and carry out amendment as prayed in the application within 14 days from the date of order.

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3) Amended copy of plaint be submitted in the Court.

Sd/-

(Smt. V. R. Jambhule)
Joint Civil Judge (Sr.Dn.),
Darwha.

Dt/-05/01/2024