

	Special Civil Suit No.520/2013
	CNR No.MHPU02-002170-2013

ORDER BELOW EXH.96

This is an application filed by plaintiffs for carrying out an amendment in the plaint as per Order 6 Rule 17 of the Civil Procedure Code (hereinafter C.P.C. for short).

2. APPLICATION IN SHORT IS AS UNDER :

The suit is filed by plaintiffs for declaration, injunction and setting aside the Sale Deed executed in favour of defendants. Plaintiffs have also filed their evidence affidavit on 04/11/2020. It is stated that defendant No.4 has filed pursis and communicated conveyance of substantial portion of the suit property along with other properties to Naiknavare Buildcon Pvt. Ltd. by defendant No.4. Plaintiffs have amended the suit and added Naiknavare Township Pvt. Ltd. as defendant. It is also necessary to amend the plaint in respect of the Sale Deed executed in between defendant No.4 and proposed defendant No.5. The reliefs in respect of the Agreement and Power of Attorney dated 16/01/2010, are also essential. Therefore, plaintiffs are seeking an amendment in the suit to add proposed defendant No.5 Naiknavare Buildcon Pvt. Ltd. as necessary party. It is also submitted that when Advocate is changed by plaintiff, they realised their mistake. It is necessary to add certain paras in respect of documents executed in the year 2010 and accordingly, there is also need to insert prayer clause in the suit. By proposed amendment, nature of the suit and cause of action will not

be changed. Considering all above facts, plaintiffs have prayed for allowing the application.

3. The application is resisted by defendant Nos.2 to 4 by filing their reply at Exh.99. It is stated that the application is not maintainable as the amendment application is not verified. The suit is filed in the year 2013. The interim injunction application was partly allowed and while granting an injunction order, the Court has observed that defendants are in possession of the suit property. Appeal from order bearing its No.1255/2013 along with the Civil Application No.1487/2013, are already disposed off. As per the order of the Hon'ble High Court, defendants have deposited an amount of Rs.1,26,18,750/-. Later on, S.L.P. No.5797/2014 filed by plaintiffs in the Hon'ble Supreme Court, is also dismissed. Therefore, considering all above facts, defendants have submitted that the contentions of plaintiffs that inadvertently, the said amendment is not written in the plaint, is not acceptable.

4. The execution and registration of the Deed dated 16/01/2010, is an admitted fact. They have an objection to permit plaintiffs to add relevant paras in the plaint. Initially, plaintiffs have never asked the cancellation of documents dated 16/01/2010. Issues are framed long back and therefore, there is no due diligence in asking the proposed amendment. At the same time, they have no objection to add proposed defendant No.5 as necessary party and prayer clause A-3 which is connected to proposed defendant No.5. Considering all above facts, defendants have prayed for passing an

appropriate order.

5. Considering the rival contentions of the parties, following points arise for my determination, to which I record my findings along with reasons as under :

Sr. No.	POINTS	FINDINGS
1	Whether plaintiffs are entitled for carrying out an amendment in the plaint, as sought for ?	In the Affirmative.
2	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 AND 2 :

6. Heard both Advocates. Perused the record. Advocate for plaintiffs has submitted that with the present amendment application, plaintiffs have sought two folds reliefs. They are seeking an addition of some paras in the plaint. Plaintiffs are further seeking an addition of parties in pursuance of Conveyance Deed executed in favour of Naiknavare Buildcon Pvt. Ltd. dated 26/04/2019. New Advocate is appointed by plaintiffs, who noticed necessity of amendment so far as contention in respect of the document dated 16/01/2010, is concerned. Considering all above facts, Advocate for plaintiffs has prayed for allowing the application.

7. On the contrary, Advocate for defendant Nos.2 to 4 has submitted that only change of Advocate is no ground to allow an application. When both parties fought together till the stage of the

Hon'ble Supreme Court, then guidance of the Advocate was very well available to both parties. Issues are already framed and evidence is also started. Plaintiffs have filed an affidavit of evidence Exh.18. Considering all above facts and as per the proviso to Order 6 Rule 17, the application is liable to be rejected.

8. Advocate for defendant Nos.2 to 4 has placed his reliance on the following judgments :

- i. **Pandit Malhari Mahale Vs. Monika Pandit Mahale & Ors.** reported in 2020 (11) SCC 549.
- ii. **M. Revanna Vs. Anjanamma (Dead) by L.Rs. and Others** reported in 2020 (1) Mh.LJ 143.
- iii. **Smt. Mattoo Devi Vs. Damodar Lal (Dead) by L.Rs. and Others** reported in AIR 2001 SUPREME COURT 2611.

9. Considering rival pleadings of the parties and in view of no objection to add defendant No.5 as necessary party in connection with the execution of Conveyance Deed dated 26/04/2019, application can be partly allowed. So far as another prayer of plaintiffs in respect of addition of two paras in the plaint, defendants have taken strong objection. It is the submission of defendants that proposed para Nos.21(V) and 21(VII) along with prayer clause A-1 and A-2 will change the nature of the suit. Initially, no relief was sought by plaintiffs in respect of the alleged documents. Therefore, amendment cannot be allowed.

10. Considering these facts, I have perused the plaint. The suit is filed by plaintiffs for declaration and perpetual injunction. Plaintiffs have also sought relief of setting aside Sale Deed dated 06/10/2012. Para No.6 of the plaint deals with document dated 16/01/2010. It is the contention of plaintiffs that defendants prepared and got executed an agreement on 16/01/2010. The agreement was executed without making consideration and by giving postdated cheques. The alleged Development Agreement and Power of Attorney bearing registration Nos.354/2010 and 355/2010 were executed after obtaining the signature of plaintiffs in good faith. Para No.9 of the plaint deals with the right of defendants in pursuance of agreement dated 16/01/2010.

11. It is further contention of plaintiffs that defendants could have file the suit for specific performance of contract, but they themselves contravene the terms and conditions of an agreement dated 16/01/2010. Para No.21 of the plaint indicates that after span of two years, on 06/10/2012 by misusing the Power of Attorney, defendants got executed Sale Deed in their names, hence, plaintiffs have contended the Sale Deed dated 06/10/2012 as void ab initio. The relief of cancellation of Sale Deed dated 06/10/2012 is claimed by plaintiffs and prayer clause (d) deals with granting an injunction against defendants on the basis of alleged Documents dated 06/10/2012 and 16/01/2010. Considering all above facts, it appears that grudge of plaintiffs starts with the execution of document dated 16/01/2010.

12. In the case of **Pandit Malhari Mahale Vs. Monika Pandit Mahale & Ors.** (Cited Supra), their Lordship has discussed that, *"When there being no findings by the Court that the Court is satisfied in spite of due diligence, then the party could not introduce amendment before commencement of the trial, the order of the Trial Judge is unsustainable."* In the case of **M. Revanna Vs. Anjanamma (Dead) by L.Rs. and Others** (Cited Supra), it is discussed that, *"Leave to amend may be refused if it introduced totally different, new and inconsistent case or challenges fundamental character of suit."* At the same time, in the case of **Vishwambhar Vs. Laxminarayana**, their Lordship has discussed that, *"When an amendment sought to introduce prayer for setting aside sale deeds, such amendment changes the basis of suit then amendment application cannot be allowed."*

13. In the present suit, plaintiffs have sought the relief in connection with an Agreement dated 16/01/2010. It is also the contentions of plaintiffs that the right accrued in favour of defendants was misused without any authority and defendants got executed the Sale Deed in their names. Relief in respect of injunction relating to the document dated 16/01/2010, is already claimed by plaintiffs. With the proposed amendment, no separate case is made out by plaintiffs. Therefore, considering all above facts, plaintiffs are entitled for carrying out an amendment in the plaint.

14. No separate cause of action is arisen in favour of plaintiffs. The suit is filed in the year 2013 and injunction is prayed by plaintiffs since beginning. Hence, plaintiffs have satisfactorily

explained the due diligence. If plaintiffs have succeeded to prove the issues, then effect of execution of earlier documents is also required to be taken into consideration. Hence, I answer point No.1 in affirmative and in answer to point No.2, I proceed to pass the following order :

ORDER

1. The application is hereby allowed.
2. The plaintiffs are hereby permitted to carry out the proposed amendment within stipulated period of 14 days.

(Dictated and pronounced in Open Court.)

Vadgaon Maval.
Date : 20/10/2021

Sd/-xxx
(P. G. Deshmukh)
3rd Jt. Civil Judge Senior Division,
Vadgaon Maval, Pune.

Prakash Sagaji Dhire & Ors.
Vs.
Naiknavare Township Pvt. Ltd. & Ors.

Special Civil Suit No.520/2013
CNR No.MHPU26-002170-2013
Exh.96

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C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Order is same word for word as per Original Order.

Name of Steno : Abhishek Arun Gite
(Stenographer Grade-II)

Court Name : P. G. Deshmukh
3rd Jt. Civil Judge Senior Division,
Vadgaon Maval, Pune.

Date of Order : 20/10/2021

Order signed by the
Presiding Officer : 21/10/2021

Order Uploaded on : 22/10/2021