



R.C.S. NO.144 of 2023
Bhagyashree Namdev Ingale and Ors Vs.
Pandit Dnyanoba Yashwant and Ors.
CNR NO. MHPU200014302023

:: ORDER BELOW EXH.NO. 17 ::

1. The is an application filed by the plaintiffs under Order- VI Rule 17 of the Code of Civil Procedure, 1908 here-in-after referred as to “*the C.P.C.*”
2. Read the application, affidavit filed in support of the application and say filed by defendants No. 2 to 5. Heard the learned Advocates for both the parties.
3. The learned Advocate for the plaintiffs submitted that the present suit is filed for partition, declaration and perpetual injunction against the defendants. The plaintiffs have inadvertently mentioned field on the share of defendant No.1 in the suit property bearing Gut No.1239/1 as 36 H.96 R instead of field 00 H. 36.75 R. in the plaint. It is nothing but typographical mistake.
4. The learned Advocate for the plaintiffs submitted that, during the pendency of the suit, on 05/12/2023, defendants No.4 and 5 have illegally executed sale deed No.10285/2023 (here-in-after referred as to “*the said sale deed*”) in favour of *Deepak Bhanudas Gardkar*. On the basis of the said sale deed, *Deepak Bhanudas Gardkar* is making obstruction to peaceful possession of the plaintiffs and trying to make construction in the suit property. Therefore, it is necessary to make him party to the present suit. The said sale is illegal and null and void and it is not binding upon the share and right and interest of the plaintiffs in the suit property. Therefore, the proposed amendment in the plaint is

necessary. The plaintiffs have ready to deposit requisite Court fees stamps.

5. The learned Advocate for the plaintiffs further submitted that the trial of the suit is not yet commenced. If the proposed amendment is allowed, the nature of the suit will not be changed. On the contrary, it will be helpful to decide the controversy between the parties on merit. If the proposed amendment is not allowed, irreparable loss will be caused to the plaintiffs. On the contrary, defendants will not suffer from any loss. He prayed that application for amendment of plaint may kindly be allowed.

6. The learned Advocate for the defendant No. 2 to 5 submitted the application filed by the plaintiff is not genuine, legal and liable to be rejected. Plaintiffs have suppressed the material facts. The present application has been filed with the intention to harass the plaintiffs. They have knowledge of field of the suit property. However, they have intentionally mentioned wrong field in the plaint. The said sale deed is legal and valid. Therefore, there is not sufficient reason to amend the plaint and application is liable to rejected. He prayed that the application may kindly be rejected with costs.

7. The points which arise for my determination along with the findings thereon are as under:

S.N.	POINTS	FINDING
1.	Whether the proposed amendment is necessary for the determination of real question in controversy between the parties ?	Yes.
2	Whether proposed amendment causes prejudice or injustice to the defendants?	No.

3	What order?	Application is allowed.
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: REASONS ::

POINTS NO.1 AND 2 :

8. Both points are co-related to each other. To avoid repetition, they are discussed simultaneously.

9. According to the plaintiffs, the plaintiffs have inadvertently mentioned field on the share of defendant No.1 in the suit property bearing Gut No.1239/1 as 36 H.96 R instead of field 00 H. 36.75 R. in the plaint. It is nothing but typographical mistake. during the pendency of the suit, on 05/12/2023, defendants No.4 and 5 have illegally executed said sale deed in favour of *Deepak Bhanudas Gardkar*. On the basis of the said sale deed, the purchaser is making obstruction to peaceful possession of the plaintiffs and trying to make construction in the suit property. Therefore, it is necessary to make him party to the present suit. It is also contentions of the plaintiffs that the said sale is illegal and null and void and it is not binding upon the share and right and interest of the plaintiffs in the suit property. Therefore, the proposed amendment in the plaint is necessary.

10. On perusal of plaint, it appears that the present suit is filed for partition, declaration and perpetual injunction against the defendants. Considering plaint, written statements and rival submissions of both the parties and observations in the above cited cases, the proposed amendment is necessary for determining the real questions in controversy between the parties. It also appears that the trial of the suit is not yet commenced. Therefore, the defendants will be at liberty to make their defence accordingly.

11. It is to be kept in mind that, while deciding application for amendment, a hyper technical approach should not be adopted. Therefore, I am of the opinion that, no prejudice will be caused to the defendants, if the proposed amendment is allowed. Even though the proposed amendment is allowed, the nature of the suit will not be changed. On the contrary, it will facilitate the proper and final disposal of the matter on merit. Therefore, it would be the proposed amendment needs to be allowed. Accordingly, I answered of point No.1 in the affirmative and point No.2 in the negative.

POINT NO.3:

12. In view of above discussions and findings on points No.1 and 2, the application deserves to be allowed subject to costs. Hence, I proceed to pass the following order

:: ORDER ::

1. Application is allowed subject to costs.
2. Plaintiffs are permitted to carry out the proposed amendment in the plaint subject to payment of costs of ***Rs. 1,000/- (In words, Rupees One Thousand Only)*** payable to the defendants on or before next date.
3. Plaintiffs shall carry out proposed amendment in the plaint and submit amended plaint on or before next date.
4. Plaintiffs are permitted to deposit requisite Court fees stamps.

(D.B.Domale)

Place: Ghodnadi.
Date: 25/04/2025

2nd Jt.Civil Judge Junior Division
Ghodnadi, Tal. Shirur, Dist. Pune.

:: CERTIFICATE ::

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	: S.N.Sargade (Grade - III)
Designation of the Court	: 2 nd Jt. C.J.J.D.,& J.M.FC, Ghodnadi, Tal. Shirur, Dist.Pune
Date of Order	: 25/04/2025
Order signed by the P.O. on	: 25/04/2025
Uploaded on	: 28/04/2025

Sd/-xxx
(S.N.Sargade)
Stenographer Grade- III