

Mr. Kishor Ajetroa, for Petitioner.

P.C.

- SSP

seek relief in respect of those alienations also.

4. Mr. Ajetrao, the learned Counsel for the Petitioner submitted that the proposed amendment completely alters the nature of the suit. Initially, the suit was for partition and separate possession. By the proposed amendment, the Plaintiff is seeking the execution of the sale deed in favour of the Plaintiff by cancelling the earlier Instrument dated 27 November 2017 and in the event of default on the part of Defendant Nos.1 to 3 and 3a to 3c to execute the instrument within the stipulated period, execution thereof by appointing an officer of the Court. According to the learned Counsel for the Petitioner, the suit for partition and separate possession now partakes the character of a suit for specific performance of contract.

5. Mr. Ajetrao, the learned Counsel relied on a decision of the Supreme Court in the case of Basavaraj V/s. Indira and Ors.¹ wherein it was, inter alia, observed that when the suit was filed for partition and separate possession, and by way of amendment, relief of declaration of the compromise decree being null and void was sought, the same would certainly change the nature of the suit and the same was impermissible.

6. It is trite, all amendments which are necessary to determine the real questions in controversy are required to be allowed, provided no irretrievable prejudice is caused to the defendant. It is equally well settled that the Court is

¹ (2024) 3 SCC 705

required to take conscious cognizance of the subsequent events, during the pendency of the proceedings.

7. In the case at hand, both the events, pressed into service by the Plaintiff, namely, the alleged execution of the consent terms and the alienation of the portions of the suit property, occurred during the pendency of the suit. These subsequent events bear upon the determination of the rights and liabilities of the parties. In that view of the matter, the learned Civil Judge was justified in allowing the Plaintiff to amend the plaint.

8. The thrust of the submission of Mr. Ajetroa that the prayers in clause 11(e)(3) and (4) change the nature of the suit, does not merit acceptance as the said prayers are in relation to the execution of the instrument on 27 November 2017. The Plaintiff is seeking a declaration that the said instrument is void and not binding on the Plaintiff and the relief of cancellation of the said instrument dated 27 November 2017 and execution of instrument in favour of the Plaintiff by accepting consideration, necessary flows from the relief of declaration. At any rate, to avoid the multiplicity of proceedings and determine all questions in controversy between the parties, the proposed amendment is necessary. Thus, I do not find any justifiable reason to interfere with the impugned order.

9. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)

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