

RCS/467/2015

ORDER

Registration No.: RCS/467/2015
Filing No.: RCS/467/2015
Filed On: 02/02/2015
Registered On : 02/02/2015

IN THE CIVIL COURT AT ANAND

REGULAR CIVIL SUIT NO. 467 OF 2015.

RCS/467/2015

Plaintiff :

1. RAVINDRABHAI VIRBHAI PRAJAPATI
AT-GANGADEV NAGAR, NANI KHODIYAR, 100 FEET
ROAD, ANAND
ANAND

VERSUS

Defendant :

1. KOKILABEN HASHMUKHBHAI PATEL
AT-PARABADI VADU FALIYU, LAMBHVEL TA DI-
ANAND
LAMBHVEL
2. RAKESHBHAI HASHMUKHBHAI PATEL
AT-PARABADI VADU FALIYU, LAMBHVEL TA DI-
ANAND
LAMBHVEL

Appearance:

Y D PAREKH For Plaintiff 1

P B DESAI For Defendant 2, 1

ORDER

REGULAR CIVIL SUIT No. 467 OF 2015

Order Below Exh. 15

The present application has been given by the Third Party Applicant to implead him as defendant and further the Third Party applicant has contended that he is a co-owner and jointly possession holder in land bearing Revenue Survey No. 489 + 490 paiki 1, Revenue Survey No. 483, Revenue Survey No. 484 and Revenue Survey No. 472 situated in the village Lambhvel, Ta. & Dist. Anand (hereinafter referred as **“disputed properties”**). In addition, it is averred that the name of Third Party Applicant is being reflected in the revenue records. Further, the Third Party applicant has contended that his right, interest and share is lying in the disputed properties and there is great chances of damages to the right, title and interest of the Third party applicant. It is prayed that as the Third Party Applicant is a necessary and proper party, and hence, required to be joined as co-defendant.

As against the present application, the plaintiff has filed his reply at exh. 19 and contended that the Third Party Applicant has not cited provisions in his application and as this application is far from truth, misleading, ambiguous, incomplete and requires to be rejected. Further, it is contended that the Third Party Applicant is indirectly abetting the present defendants and trying to injure the legal rights of the plaintiff. Furthermore, it is contended that the plaintiff has filed the suit only against the present defendants only limited for their share and the relief is sought against the present defendants only, and also, the plaintiff has not sought any relief against the Third Party Applicant for his share in the disputed properties. At last, the plaintiff has prayed that there is no dispute involved between the plaintiff and the Third Party Applicant, and hence, the present application of the Third Party Applicant is required to be rejected with cost.

This Court has considered the endorsement made by the Ld. Advocate,

Mr. Desai, for the defendants that he has no objection if the present application is allowed. During the oral arguments, he has declared that he has no objection against the present application of the Third Party Applicant.

During the oral arguments, the Ld. Advocate for the Third Party Applicant, Mr. S N Patel and the Ld. Advocate for the plaintiff, Mr. Y D Parekh, were stick to their application and reply, respectively. Therefore, to avoid repetition the arguments of both the advocates are not elaborated here.

I have gone through the whole record, read the application on hand and considered endorsement, and also, the oral arguments of the learned advocates while deciding the present application.

First of all, it is needless to mention here that the plaintiff has sought the relief against the present defendants for their share in the disputed properties. It transpires from the Mark 3/10 and Mark 3/11 Agreement of Understanding and Agreement of Mortgage, respectively that the transaction happened for the share of the present defendants in the disputed properties. In fact, it transpires from the record that the disputed properties are joint properties of the different co-owners. This Court has minutely examined the documents at Mark-3/1, Mark-3/4 and Mark-3/5 village Form No. 7/12 in respect of land bearing Revenue Survey No. 489 + 490 paiki 1, Revenue Survey No. 483, Revenue Survey No. 484 and Revenue Survey No. 472 situated in the village Lambhvel, Ta. & Dist. Anand, respectively. It is evident that the name of the Third Party Applicant is being reflected in the aforesaid disputed properties. Further, it transpires partition of the disputed lands are yet not took place, therefore, it is very difficult to predict the future scenario of the disputed properties. On perusal of of Mark 3/10 and 3/11, even the plaintiff has shown apprehensions of future litigations/actions and what to do for the same, which can be very well

ascertained from the terms and conditions of the agreements. However, this Court is of the firm view that if any property in dispute; involves more than one owners and if any one is going to be affected by the outcome of the civil suit, all those concerned are required to be brought on record for avoiding multiplicity of proceedings and for just and proper adjudication of dispute involved. In the case on hand, the Third Party Applicant is either proper party or necessary party because outcome of the present suit may undoubtedly affect the Third Party Applicant being a co-owner of the disputed properties.

This Court is of the view that a necessary party is one without whom no order can be made effectively and proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. Further, this Court is of the view that the Third Party Applicant is proper party in the suit on hand. Looking to the facts of the matter and the relief claimed by the Third Party Applicant in my view, the presence of the Third Party Applicant is necessary for effectual adjudication. Hence, in the large interest of justice, I pass the following order:

ORDER

The present application is hereby allowed.

The Third Party Applicant is ordered to be joined under Order 1 Rule 10(2) of the C.P. Code as Defendant No.3 to this suit.

The plaintiff is directed to amend the plaint and injunction application (exh.5) accordingly and supply the amended copy of the plaint and injunction application (exh.5) within 14 days from the date of order.

After such amendment and production of amended plaint and injunction application (exh.5), notice be issued to the newly joined defendant as well as to the present Defendant No. 1 & 2 on payment of process fees.

Pronounced in the open court today i.e. on 21st July, 2015.

Place: Anand	(Kiritkumar Babubhai Vaghela)
	Code No. GJ01142
Date: 21.07.2015	2nd Additional Civil Judge
	Anand

Date : 21/07/2015	Mr. Kiritkumar Babubhai Vaghela
Place : ANAND	GJ01142

ANAND.