

Order below Exh. 35 Application

(1)Read this application, its reply/ objections vide ex. 41 filed by the Plaintiffs. Heard the Ld. Advocates for the proposed Defendant, Plaintiff, and the present Defendant, Perused the papers on record. The present application has been given by proposed Defendant namely “Vyapti Vandemataram (I) Infrabuild Pvt. Ltd” to implead it as defendant and be joined as party stating that the Company has obtained the Re-development Work Order on the disputed property, and it has right and interest in the cause.

(2)The parties on record are duly served with notice. The Ld. Advocate for the plaintiff has objected this application, filed its reply vide ex.41 and orally submitted that the present application is not maintainable as the plaintiff is not seeking any remedy against the proposed defendant. The Ld. Advocate for the Plaintiffs has filed written arguments and placed reliance on citations- Hon. SC Judgments (1) Mumbai International Airport Pvt. Ltd. v/s Regency Convention Centre and Hotels Pvt. Ltd. And Others [Civil Appeal no.4900/2020 arising out of SLP (C) no.2085/2009 Decided on Dt.6/7/2010] (2) Kanaklata Das v/s Naba KumarDas [2018(0)AIJEL-SC 61558].

(3)Opportunity of being heard is given to the Ld. Advocate for the present Defendant, he has submitted that there is no any affidavit filed by the concerned person, the work order is given and there would be a rise of issue regarding it.

(4)Before going further, it will be more useful to refer the provisions of law....**Code of Civil Procedure 1908**

Order 1 Rule 3

All persons may be joined in one suit as defendants where—

- (a) any right to relief in respect of, or arising out of, the same act of transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and**
- (b) If separate suits were brought against such persons, any common question of law or fact would arise.**

Looking to the facts on record and the main contentions, the legal position of Law is clear in itself that the right to relief in respect of the

disputed property is alleged to exist against the person, and the Ld. Advocate for the plaintiff has contested in terms of the same which shows that the plaintiff side has not prayed for any remedy from the proposed defendants. Further there is nothing on record which may make it clear that a common question of law or fact would arise in view of the allotment of work order to the proposed defendant, or there would be any incurable loss if this application stands rejected.

(5) Further in case of (1) Mumbai International Airport Pvt. Ltd. (Supra) and (2) Kanaklata Das v/s Naba Kumar Das (Supra), the Honble Apex Court has elaborated the aspect of 'Necessary Party' and 'Proper Party'. As there are catena of judgments where in the hon'ble Apex Court and Various High Courts have held 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. Looking to the facts of the matter and the relief claimed by the plaintiffs, in my view, the presence of the proposed defendant is not necessary for effectual adjudication in this case. Hence, in view of forgoing discussion, I pass the final following order.

ORDER

This application is rejected.

No order as to costs.

Pronounced in the open court today on 18th Day of December in the year 2020.

(Ms. Bharati Kanubhai Jadav)
7th Additional Senior Civil Judge
Jamnagar Code GJ00985