
SPECIAL CIVIL SUIT NO. 24 OF 2021

Order below application at Exh.109 :-

1. By way of present application under Order 1 Rule 10(2) of the Code of Civil Procedure, the applicant – Babubhai Lakshmanbhai Gajera has prayed to join him as party defendant No. 7 in the present suit.

2. Read this application, plaint and other related papers on record. I have also perused the documents filed by the applicant along with the present application.

3. Heard Mr. D.K. Dodai, learned advocate appearing for the applicant and Mr. Y.A. Lunat, learned advocate appearing for the plaintiff no.1 as well as Mr. G.N. Borsaliwala, learned advocate appearing for the defendant nos. 3 to 6. None appeared on behalf of the rest of the parties.

4. Mr. Dodai, learned advocate appearing for the applicant has filed the written arguments vide Exh.112 in which he has reiterated the facts as narrated in the present application. He has submitted that the plaintiffs have filed the present suit against the defendants for cancellation of registered sale deed as well as for declaration and permanent injunction. He has further submitted that since the plaintiffs are old aged women and not well versed in the law and the costs of these proceedings cannot be borne by the plaintiffs or their children, the plaintiffs have executed an

agreement with the applicant on 12th January, 2016 and as per the terms and conditions of the said agreement, all the expenses for the present suit proceedings and others for the suit land is to be borne by the present applicant and the plaintiffs have no liability for expenses incurred for the proceedings pertaining to the suit land.

4.1 Mr. Dodai, learned advocate appearing for the applicant has further submitted that as per the terms and conditions of the agreement, the plaintiffs should not transfer, alienate, assign or sale the suit land without obtaining the consent of the present applicant and at the time of getting title clearance of the suit land in future, the plaintiffs have to give 60% share to the present application from the total share of the plaintiffs and if there is any chance of amicable settlement with the defendants, it should be executed by the plaintiffs and the present applicant jointly. He has submitted that the applicant has produced the copy of the said agreement with the present application. He has further submitted that thereafter, so far as the suit land is concerned, both the parties and the applicant have arrived at amicable settlement on 9th April, 2018 in which both the parties have agreed and admitted to pay the amount to the present applicant and accordingly, as per the compromise, both the parties had filed withdrawal pursis before the court, however, they have not produced any compromise pursis in the present suit.

4.2 Mr. Dodai, learned advocate appearing for the applicant has submitted that the applicant has some apprehension that the parties to the present suit may

put an end to their disputes with the suit land without paying any amount to the present applicant and since both the parties have tried to get ex parte decree in the present suit and, hence, the applicant desires to join him as party defendant no.7 in the present suit. He has further submitted that as per the terms and conditions of the amicable settlement of the parties and the agreement executed by the plaintiffs in favour of the present applicant, the applicant has right, title and interest over the suit land. He has further submitted that if the applicant is being joined as party defendant in the present suit, it would not cause any loss or hardship to the plaintiffs and the present defendants and if, he is not being joined as party in the present suit, it would cause irreparable loss to him and, therefore, he has prayed to allow the present application.

5. On the other hand, Mr. Y.A. Lunat, learned advocate appearing for the plaintiff no.1 has submitted that as such in the present suit, the plaintiffs have filed the withdrawal pursis on 21st April, 2018 vide Exh.103, however, since the then learned advocate appearing for the defendant nos. 3 to 6 have raised objection against the withdrawal of the present suit, the said pursis was kept for hearing. He has further submitted that as such thereafter, the learned advocate appearing for the defendant nos. 3 to 6 has filed a pursis at Exh.116 on 13th December, 2021 and declared that the defendant nos. 3 to 6 are now withdrawing the objections raised against the withdrawal pursis at Exh.103 filed by the plaintiffs and as such the

defendant nos. 3 to 6 have already given consent to the plaintiffs for withdrawal of the present suit on the basis of the amicable settlement and accordingly, he has prayed to pass an appropriate order in the present suit.

6. Mr. G.N. Borsaliwala, learned advocate appearing for the defendant nos. 3 to 6 has strongly objected the present application and argued that the applicant has filed the present application under Order 1 Rule 10 of the Code of Civil Procedure. He has further submitted that as such the plaintiffs have filed the present suit against the defendants for cancellation of registered sale deed as well as for declaration and permanent injunction. He has further pointed out that at the time of filing the present suit, the plaintiffs have also filed interim injunction application at Exh.5 and after hearing both the parties, the said interim injunction application at Exh.5 was rejected by order dated 22nd April, 2015. He has further submitted that as such thereafter, the issues have been framed vide Exh.66 on 28th June, 2016. He has further submitted that looking to the contents of the plaint and other related papers on record, it clearly appears that the applicant has nothing to do with the suit land and as such the applicant is not having any right, title or interest over the suit land. He has further submitted that the cause of action arisen for the plaintiffs to file the present suit against the defendants would never affect any right of the present applicant as there is no privity of contract between the parties and the present applicant at the time of filing the present suit.

6.1 Mr. Borsaliwala, learned advocate appearing for the defendant nos. 3 to 6 has further submitted that the applicant has produced the copy of the agreement dated 12th January, 2016 and at that time, the plaintiffs have already filed the present suit and, therefore, the averments made by the applicant in the present application that he has incurred the expenses for the present suit proceedings qua the suit land are not believable and as such so far as the agreement between the plaintiffs and the applicant is totally a separate privity of contract which is totally irrelevant for the present proceedings. He has further submitted that on relying upon the agreement of year 2016, the applicant has prayed to join him as party in the present suit, however, since the applicant has not taken any action against the plaintiffs for compliance of the agreement within 3 years, the said agreement is as such null and void and, therefore, also on the basis of the said agreement, the applicant has no right to file such an application in the present suit. He has further submitted that as such the contents of the present application are totally different than the plaint and it is not possible to amend the plaint and since the period of limitation for challenging the agreement is already completed as such the present application is not tenable and, accordingly, he has prayed to reject the present application with costs.

7. Having heard the learned advocates appearing for the respective parties and on perusal of the entire record, it clearly appears that the plaintiffs have filed the present suit against the defendants for

cancellation of registered sale deed as well as for declaration and permanent injunction before the court of Principal Senior Civil Judge at Surat on 6th March, 2012. It appears that on service of summons, the defendant nos. 1 and 2 have filed their written statement vide Exh.22 and the defendant nos. 4 to 6 have filed their written statement vide Exh.14 and, thereafter, the plaintiffs have filed the counter affidavits vide Exhs. 26 and 32 respectively. It further appears that the plaintiffs have also filed an interim injunction application at Exh.5 and after hearing both the parties, the said interim injunction application at Exh.5 was rejected by order dated 22nd April, 2015 by the Second Additional Senior Civil Judge, Surat. It further appears that thereafter, the issues have been framed vide Exh.66 on 28th June, 2016 and since then the present suit was pending at the stage of evidence of the plaintiffs.

8. It further transpires from the record that thereafter, on creation of the court of Principal Senior Civil Judge at Mandvi, District : Surat, the present suit was transferred to Mandvi from Surat and it was renumbered as Special Civil Suit No. 46 of 2017. On perusal of the record, it appears that at the Court of Principal Senior Civil Judge at Mandvi, the plaintiffs have filed the withdrawal pursis on 21st April, 2018 vide Exh.103, however, since the then learned advocate appearing for the defendant nos. 3 to 6 have raised objection against the withdrawal of the present suit, the said pursis was kept for hearing.

9. It further transpires from the record that meanwhile, the present applicant has filed the present application under Order 1 Rule 10 of the Code of Civil Procedure praying to join him as party defendant no.7 in the present suit. It appears that along with the present application, the application has produced the copy of the agreement dated 12th January, 2016 executed by the plaintiffs in favour of the applicant at Mark 110/1 and he has also produced the copy of the Memorandum of Understanding (Compromise Deed) executed by both the parties and the present applicant on 9th April, 2018 at Mark 110/2. However, it appears that thereafter, on creation of new court of Principal Senior Civil Judge at Mangrol, the said suit was transferred from Mandvi to Mangrol and it was renumbered as Special Civil Suit No. 24 of 2021.

10. Now looking to the plaint and the documentary evidence produced by the plaintiffs along with the suit, it appears that the suit land being Non Agricultural Land of Survey No.349/2 Block No.325 situated in the sim of Village : Kunvarda, Taluka : Mangrol, District : Surat is mutated in the name of the defendant nos. 3 to 6. It further transpires from the documentary evidence that the defendant nos. 1 and 2 were the Power of Attorney of the plaintiffs and as such the defendant nos. 1 and 2 have executed the registered sale deed on the basis of the power of attorney of the plaintiffs in favour of the defendant nos. 3 to 6 on 14th February, 2011 and as such the entry to that effect is also certified. It appears that the plaintiffs have filed the present suit for cancellation of the said registered sale deed

of the suit land executed by the defendant nos. 1 and 2 as Power of Attorney of the plaintiffs in favour of the defendant nos. 3 to 6. It transpires from the record that as such the plaintiffs have filed the present suit before the court of Principal Senior Civil Judge at Surat on 6th March, 2012. However, the present applicant has filed the present application on 30th September, 2019 in which he has contended that since the plaintiffs are old aged women and not well versed in the law and the costs of these proceedings cannot be borne by the plaintiffs or their children, the plaintiffs have executed an agreement with the applicant on 12th January, 2016 and as per the terms and conditions of the said agreement, all the expenses for the present suit proceedings and others for the suit land is to be borne by the present applicant and the plaintiffs have no liability for expenses incurred for the proceedings pertaining to the suit land and thereafter, since both the parties of the present suit have arrived at amicable settlement, the plaintiff desires to join him as party defendant in the present suit claiming that on the basis of the agreement executed by the plaintiffs, he is entitled to get his share from the suit land and if he is not joined as party in the present suit, it would cause loss, injury and hardship to the applicant and, therefore, he has filed the present application.

11. Thus, looking to the prayer clause of the present suit, it is clear that the plaintiff has prayed for cancellation of the registered sale deed executed on 14th February, 2011 by the defendant nos. 1 and 2 as Power of Attorney of the plaintiffs in favour of the

defendant nos. 3 to 6 and also claimed consequential reliefs of declaration and injunction. Admittedly, the present applicant was neither the owner of the suit land nor he is the purchaser of the suit land and as such there is no cause of action has arisen against the present applicant. Now looking to the documentary evidence produced by the applicant at Mark 110/1 and Mark 110/2, it clearly appears that the plaintiffs have executed an agreement on 12th January, 2016 and it was notarized on 15th January, 2016 and on perusal of the said agreement, it clearly appears that the said agreement was executed by the plaintiffs in favour of the present applicant in which the terms and conditions of the agreement are specifically mentioned. On perusal of the document produced at Mark 110/2, it appears that the said compromise deed was executed by the plaintiffs, present applicant and the defendant nos. 3 to 6 on 9th April, 2018. Thus, it clearly appears that the parties to the present suit have settled the disputes involved in the present suit amicably and the present applicant was also one of the executors to the compromise deed.

12. It transpires that on the basis of the amicable settlement, the plaintiffs have decided not to proceed with the present suit and accordingly, they have filed the withdrawal pursis vide Exh.103 on 21st April, 2018, however, at that time, the learned advocate appearing for the defendant nos. 3 to 6 have raised objection against the withdrawal of the suit and accordingly, my learned predecessor has kept the said withdrawal pursis for hearing. However, it appears that thereafter, the learned advocate appearing for the defendant nos. 3 to 6

has filed a pursis at Exh.116 on 13th December, 2021 and declared that the defendant nos. 3 to 6 are now withdrawing the objections raised against the withdrawal pursis at Exh.103 filed by the plaintiffs and as such the defendant nos. 3 to 6 have already given consent to the plaintiffs for withdrawal of the present suit on the basis of the amicable settlement and thus, as such both the parties to the present suit have already put an end to their disputes and the plaintiffs have decided not to proceed with the present suit. However, meanwhile, the present applicant has filed the present application for joining him as party defendant no.7 in the present suit on the basis of the agreement dated 12th January, 2016 executed by the plaintiffs in his favour and also on the basis of the compromise deed executed by the parties in which the present applicant is one of the executors and by way of present application, he has claimed that on the basis of the said agreement, he is having share in the suit land and if both the parties to the present suit may withdraw the suit, it would cause loss and hardship to the present applicant. Thus, from perusal of the entire record, it clearly appears that the cause of action which had arisen for the plaintiffs to file the present suit against the defendants are totally different than the cause of the present applicant to join as party defendant in the present suit and as such the present applicant was neither the owner of the suit land nor he has any right, title or interest at the time of filing the suit and he has only claimed to join as party defendant on the basis of the agreement executed by the plaintiffs on 12th January, 2016.

13. Therefore, now the question, whether the said applicant – Babubhai Lakshmanbhai Gajera is the proper and necessary party to the present suit, is required to be determined. So far as addition of parties under the Code of Civil Procedure is concerned, such power of addition of parties emanates from Order 1 Rule 10 of the CPC. In the instant case, with order 1 Rule 10 of the CPC, I do not find it necessary to refer to other provisions of the CPC except Order 1 Rule 10 of the CPC which reads as under:

Rule 10.(1) "Where a suit has been instituted in the name of the wrong persons as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In the instant case, the plaintiffs have filed the present suit for cancellation of registered sale deed executed by the defendant nos. 1 and 2 as their Power of Attorney in favour of the defendant nos. 3 to 6 on 14th February, 2011 and for declaration and permanent injunction against the defendants. Admittedly, there was no role of the present applicant in the execution of the disputed registered sale deed. It appears that since the plaintiffs have filed the present suit against the defendants, as a middle man, the applicant has got executed an agreement with the plaintiffs on 12th January, 2016 in which the applicant has got entire responsibility and liability for incurring the expenses for the suit land. It also appears that the applicant has got one power of attorney from the plaintiffs in the name of one Mehboob Mahmad Shaikh and by the said agreement, the applicant has also tried to get 60% share from the share of the plaintiffs. Thus, on perusal of the said agreement executed by the plaintiffs in favour of the present applicant, it appears that though the said suit land has already been sold out by registered sale deed by the plaintiffs through her power of attorney i.e. defendant nos. 1 and 2 in favour of the defendant nos. 3 to 6 on 14th February, 2011, even then the applicant has got executed the agreement from the plaintiffs and by the said agreement, he has expected that the plaintiffs shall pay the 60% amount from the total settlement amount received from the defendants. It also appears that thereafter, the present applicant has also got executed compromise deed between the parties and in the said compromise deed, he joined himself as party to the settlement for getting the benefit as per

the terms of the agreement executed by the plaintiffs in favour of the present applicant.

14. On perusal of the compromise deed produced at Mark 110/2, it appears that both the parties have arrived at amicable settlement of the issues involved in the present suit and accordingly, the plaintiffs have decided not to proceed with the present suit. On perusal of the said compromise deed, in which it clearly mentioned that on execution of the registered sale deed by the defendant nos. 3 to 6, the plaintiffs shall withdraw the present suit as well as the Civil Misc. Appeal No. 31 of 2015 pending before the court of Hon'ble Principal District Judge, Surat.

15. In case of Kisan Uchattar Madhyamik Vidhyalay Samiti Vs. Additional District Judge, reported in AIR 1989 All 168, the Hon'ble Allahabad High Court has held that *provisions of Order 1 Rule 10(2) of the Code clearly empower the court to implead any person as party suo motu, who ought to have been joined, whether as a plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit.*

16. In case of Fatehsinhrao P. Gaekwad Vs. Savjibhai Haribhai Patel, reported in 1985(1) GLR 14, our Hon'ble High Court has also 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.

17. In case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay, reported in 1992 (0) GLHEL-SC 23585 = 1992(2) SCC 524, the Hon'ble Supreme Court has dealt with the issue in paragraph -14 as under :-

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action so that he should be bound by the result of the action and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally, that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action....."

18. On perusal of the record, it appears the defendants have raised dispute that the averments made by the applicant in the present application that he has incurred the expenses for the present suit proceedings qua the suit land are not believable and as such so far as the agreement between the plaintiffs and the applicant is totally a separate privity of contract which is totally irrelevant for the present proceedings. It clearly appears that the present applicant was not involved in any transaction of the disputed registered sale deed and as such the applicant has no locus to file the present application as he was neither the owner of the suit land nor he has entered into any agreement to sale prior to filing the present suit by the plaintiffs. It clearly appears that since the plaintiffs have filed the present suit against the defendants, as a middle man, the applicant has got executed an agreement with the plaintiffs on 12th January, 2016 in which the applicant has got entire responsibility and liability for incurring the expenses for the suit land. It appears that on the basis of the compromise deed, when the plaintiffs have decided not to proceed with the present suit, the applicant has apprehended that he may not get the share from the settlement amount, he has filed the present application for join him as party defendant in the present suit.

19. Admittedly, the plaintiffs have already filed the withdrawal pursis on 21st April, 2018 vide Exh.103, however, since the then learned advocate appearing for the defendant nos. 3 to 6 have raised objection against the withdrawal of the present suit, the said pursis was

kept for hearing. It seems that thereafter, the learned advocate appearing for the defendant nos. 3 to 6 has filed a pursis at Exh.116 on 13th December, 2021 and declared that the defendant nos. 3 to 6 are now withdrawing the objections raised against the withdrawal pursis at Exh.103 filed by the plaintiffs and as such the defendant nos. 3 to 6 have already given consent to the plaintiffs for withdrawal of the present suit on the basis of the amicable settlement and thus, it clearly appears that the plaintiffs have decided not to proceed with the present suit and they desire to withdraw the present suit. Admittedly, it is settled law that the plaintiff is the master of the suit and he has absolute and indefeasible right to withdraw his suit unconditionally.

20. Thus, it is crystal clear that there is no transaction took place between the parties and the present applicant and as such the cause of action had arisen for the plaintiffs to file the suit against the defendants in the year 2012 and accordingly, the plaintiffs have filed the present suit for cancellation of registered sale deed and for declaration and permanent injunction against the defendants. However, the present applicant has got executed the agreement from the plaintiffs on 12th January, 2016 and he has also got executed compromise deed from the parties to the present suit on 9th April, 2018 and, therefore, if any cause of action has arisen on the basis of the agreement executed by the plaintiffs or the compromise deed as above, the present applicant may file a separate suit against the plaintiffs and/or defendants on the that

cause of action only. By way of filing the present application, the applicant desires to join him as party defendant no.7 in the present suit, but it clearly appears that the present applicant was not involved in any transaction of registered sale deed of the suit land in the year 2012.

21. However, as discussed above, 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. In the instant case, since the applicant has no role till he got executed the agreement from the plaintiffs on 12th January, 2016 and thereafter, he got executed compromise deed on 9th April, 2018 and therefore, at the time of filing the present suit, there was no cause of action has arisen for the present applicant and after execution of the agreement between the plaintiffs and the defendants, if any new cause of action has arisen then in that case, the present applicant may challenge it by way of filing appropriate proceedings within stipulated time. Further, looking to the entire record, it is crystal clear that the applicant has not made any transaction for the suit land and, therefore, in my view, if any order would be passed in the present suit in favour of either parties, it may not cause any injury, loss or hardship to the present applicant as the said applicant has nothing to do with the registered sale transaction of the plaintiffs with the defendant nos. 3 to 6. It is pertinent to note that if the defendant nos. 3 to 6 have purchased the suit

land, it would be their individual transaction with the plaintiffs and, since in the instant case, the plaintiffs have filed the present suit for cancellation of the registered sale deed executed in favour of the defendant nos. 3 to 6 by the defendant nos. 1 and 2 as the power of attorney of the plaintiffs and there is no role of the applicant in the said sale transaction, in my view, the present applicant – Babubhai Lakshmanbhai Gajera is not necessary and proper party to the present suit and without the presence of said applicant, the order can be effectively made and it cannot be said that in their absence, no effectual adjudication can take place for the questions involved in the present suit and, thus, as such the said the present applicant – Babubhai Lakshmanbhai Gajera is not proper, necessary and interested party in the present suit which is as such filed for cancellation of registered sale deed and for declaration and permanent injunction against the defendants and, therefore, the present applicant is not required to be joined as party defendant in the present suit. Hence, I hereby pass the following order:-

=: O R D E R :=

The present application is hereby REJECTED with cost of Rs.10000/- (Rs. Ten Thousand only).

The present applicant is hereby directed to deposit the amount of cost with the District Legal Services Authority, Surat on or before 6th March, 2023 without fail. Needless to say that in case of failure to

deposit the amount of cost as above, it shall be recovered by the competent authority from his property.

Pronounced in the open Court on this 27th day of February, 2023.

Date: 27th February, 2023. (Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Mangrol, District : Surat
Judge Code : GJ00572