

MHAH200013612019



ORDER PASSED BELOW EXH. 17 IN REG.C.S.NO. 310/2019
Suresh Kedar Vs. Pandurang Shirsath + 1

The present application is filed by third party applicant Under **Order 1 Rule 10(2) of the Code of Civil Procedure (for short C.P.C.)** for impleadment them as defendant in the present suit.

2. It is averred by the applicant that, the plaintiff has filed suit for perpetual injunction. The plaintiff has not pleaded all the facts before the Court. The plaintiff has falsely submitted that, he has purchased suit property and is owner in possession. The deceased Bajirao Genu Shirsath was having heirs as shown in the application Para No.2. However, after death of Bajirao, the TILR without any verification as to heirs of diseased mutated names of only defendant No.1, 2 and deceased Gujabai to ancestral properties. The plaintiff has executed false and illegal sale-deed from defendant No.1 and 2. The present applicant has filed an application before T.I.L.R. for mutation of her name to the revenue record of the ancestral property on 19/09/2019. The applicant has ancestral right in the suit property. The plaintiff and defendants in collusion with each other and to deprive the applicant her rights of ancestral property have illegally sold suit property. The suit of the plaintiff is not maintainable without impleading these applicant as party to the suit. There is Vetral Baba Temple in the suit property in which the applicant has a customary right of worship. The present applicant also has a right to hold religious functions in the suit property of Bhandara and other religious functions and persons mentioned in the Para No. 4 of the application are taking advantage of the suit property as owners. If

the application of the applicant is not allowed, the applicants will suffer irreparable loss and the plaintiff will destroy the temple of Vetal Baba. Hence, prayed to allow the application.

3. On the other hand, the plaintiff has filed his say on the application itself and submitted that, the present application is not maintainable. The suit property was sold by defendant No.1 and 2's mother to plaintiff in the year 1996. After that also the defendants have sold more than 10 properties. The present applicant till date except this application has not taken any objection to these transfers and yet not filed any suit for cancellation of the transaction. The present application has filed only to harass the plaintiff. The names of plaintiff is registered to 7/12 extract of the suit property. The applicant has filed this application only with intention to grab suit property. Hence, prayed to reject the application.

4. The following points arise for my determination along with finding and the reasons thereon are as under..

<u>Points</u>	<u>Findings</u>
1) Whether the presence of third party is necessary in order to enable the Court effectually and completely adjudicate all the questions involved in the suit ?	..No.
2) What order ?	..Application is rejected

REASONS..

As to Points No.1 and 2..

5. Read the plaint and written statement. Perused the application and affidavit in support, Say of plaintiff on the application

itself. Heard Learned Advocates for the plaintiff and applicants.

Order I Rule 3 of C.P.C. reads as under :-

3. Who may be joined as defendants..

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 or transaction or series of acts or transaction 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.

6. To constitute the same act or transaction or series of acts or transactions, a mere finding that there were different causes of action as against the different plaintiffs/defendants or different sets of plaintiffs/defendants is not sufficient. The question as to joinder depends not on a common cause of action but on common basis of acts or series of acts. The common question of law or fact must be of sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matter should be disposed of at the same time. A common question of law or fact does not presuppose an identity of the causes of action or of the interested parties. It means, a party against whom no relief has been claimed cannot be joined as a defendants.

7. While dealing with the object of Order I, Rule 3, in many of the judgments it is observed by the Hon'ble Supreme Court that -

“Is to avoid multiplicity of suits and needless expenses to the parties if it could be avoided without embarrassment to the litigants concerned and the Court. It can not be said that though it may have incidentally have that effect. But it appears to be a desirable consequence of the rule than its main objective. The person to be joined must be one whose presence is necessary as a party. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant argument advance.

The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in action which cannot be effectively and completely settled unless he is made party. The line has been drawn on a wider construction of the rule between the direct interest or the legal and commercial interest. It is therefore, necessary that the person must be directly and 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 right. 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.”

8. **Order I, Rule 10 (2) of C.P.C. reads as under :-**

(2) Court may strike out or add parties.--

The Court 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 properly 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.

9. Under Sub-rule (2) of Order I Rule 10, the power to strike out as well as to add parties may be exercised at any stage of the proceedings, and even without any application by a party (emphasis supplied). Indeed sub-rule (2) of Order I, Rule 10 can be invoked either by a party to the suit or by the Court *suo-motu* or by a third party who desires to be added as a party. Mere inaction on the part of a plaintiff to implead a party does not affect the Court's power under this sub-rule. The power of the Court under this sub-rule is of discretion to be exercised judicially keeping in mind that one of its objects is to prevent multiplicity of suits and conflict of decisions.

10. It is well settled that, necessary parties are parties necessary

to the constitution of the suit and without whom no decree at all can be passed. Proper parties are those whose presence enables the Court to adjudicate more effectually and completely the question raised in the suit. A necessary party is one without whom no order can be made effectively and a 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 proceeding. Against a necessary party there must be a right to same relief in respect of the matters involved in the proceedings in question; it must not be possible to pass an effective decree in the absence of such a party.

11. On perusal of case in hand and factual background, the present suit is of perpetual injunction. The persons who has obstructed plaintiff peaceful possession over the suit property are the necessary or proper parties to the suit. It is well settled principle in law that the plaintiff is the master of the litigation initiated by him. He is dominus litis. Therefore, the proposed defendants cannot be impleaded in this suit as defendants by giving direction to the plaintiffs to that effect and the application is liable to be rejected. Accordingly, I answer Point No.1 in the negative and Point No. 2 as application rejected. Hence, I proceed to pass following order.

ORDER.

1. **The application Exhibit No.17 is rejected.**
2. **No order as to cost.**

Dated : 17/03/2023.

**(A.S. Birajdar)
Civil Judge (J.D.)
Pathardi.**