

MHAU070002062025



R.C.S./11/2025

Shaminabi khalil pathan Vs. Shaikh Kadu Shaikh Ibrahim

COMMON ORDER BELOW EXH.12 & 16

The application Exh. 12 is filed by the defendant Nos. 1 and 2 and prayed to dismiss the suit for non-joinder of necessary party under Order I Rule 9 of the Civil Procedure Code. Whereas, third party namely Shakuntalabai Laxman Patole filed the application Exh.16 and prayed for addition of party under Order I Rule 10 (2) of the Civil Procedure Code being necessary party to the suit.

02. Perused both the applications, say and other document on record.

03. Heard the learned Advocate for the plaintiff as well as defendants. Despite repeatedly calling the learned advocate for third party Shri. S.N. Sabne at 01.00 p.m. and 05.30 p.m. absent. Therefore, applications proceeded without argument on behalf of third party.

04. Considered the applications and argument on behalf of parties. As both the applications are inter related they are taken together for reasoning. Plaintiff Nos. 1 and 2 have filed the present suit for the perpetual injunction against defendants on the basis of registered sale deed No.4734/2017, dated 16/10/2017 in relation to suit property from original owner namely Shakuntalabai Laxman

Patole. In the present matter, Shaktuntalabai is the third party and she filed the application Exh.16 to add her as a party to the suit. There was a previous round of litigation between present defendant No.1 i.e. Shaikh Kadu Shaikh against Shakuntalabai before the Hon'ble Civil Judge, Senior Division, Vaijapur by way of civil suit RCS No. 85/2017 for permanent injunction. The suit of present defendant No.1 Shaikh Kadu Shaikh against Shakuntalabai Patole came to be dismissed on the ground that present defendant No.1 does not have the possession over the suit property. The suit was dismissed on 28/02/2023. As on today there appears to be no appeal filed against the said decision. The application for condonation of delay is not equivalent to appeal. So also, the present suit is against the defendants not to interrupt their peaceful possession. No relief is sought against the third party Shakuntalabai. It is well settled that the plaintiff is the dominous litus of his suit. He/she cannot be compelled to litigate the suit or any matter against any other person against his/her Will.

05. In present facts and circumstances of the matter, it appears that plaintiffs have not sought any relief against the third party Shakuntalabai Patole. Therefore, she does not appear to be necessary party to the suit. Being not necessary party the application Exh.16 is liable to be rejected. So also, as Shakuntalabai is not necessary party, it cannot be said that the suit suffers from the defects of non-joinder of necessary party. When any party is not a necessary party the suit does not suffer from defects of non-joinder of necessary party. Therefore, the application Exh.12 is also liable to be rejected. In this backdrop, I pass the following order -

ORDER

- 1] Both the applications vide Exh. 12 & 16 are rejected.
- 2] Costs in cause.

Date:- 24/03/2025

(S.S. Agrawal)
Jt. Civil Judge (J.D.), Gangapur.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/ Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer -	Kailas S. Rasve
Name & Designation of the Court -	S.S. Agrawal, Jt. Civil Judge Jr. Dn. & J.M.F.C., Gangapur
Order signed by the P.O.on -	26/03/2025
Order uploaded on -	26/03/2025