

Regular Civil Suit No. 246/2013.
Pandurang & others V/s. Shashikalabai & others.
CNR No : MHBI060015552013.

ORDER BELOW EXH - 94.

Through this application by virtue of Order 1 Rule 10 read with Order 6 Rule 17 of C.P.C. counter claimant has prayed for permission to add third party in the counter claim as respondent namely Manisha Vivek Dhaigude. Before adjudicating the facts it is apposite to mention the basic facts of the suit explaining the emerging circumstances for filing this application which are as infra;

02] That this is the suit for perpetual injunction filed by plaintiff wherein the defendants filed the counter claim against the plaintiff for recovery of possession and perpetual injunction. It is the claim of counter claimant that the plaintiff Pandurang has purchased the suit property from Manisha Vivek Dhaigude to whom the counter claimant Shashikala had sold the suit property.

03] It is the further claim of counter claimant that the sale deed between Shashikala and Manisha Dhaigude was illegal by virtue of provisions of Law of Prevention of Fragmentation of Land. Therefore, the purchaser of suit property from counter claimant did not receive valid title. Therefore, she could not have passed the valid title to the present plaintiff Pandurang. Hence, through counter claim the counter claimant the vendor of plaintiff's vendor claimed recovery of possession of the suit property.

04] Vide Exh. 89 the counter claimant Shashikala had moved an application praying to refer the suit to the competent authority to decide the claim of counter claimant under Section 36 of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 (hereinafter referred as Fragmentation Act, 1947) wherein this Court has rejected her claim and observed that Manisha Dhaigude is the necessary party to the counter claim. Catching the words of this Court, the counter claimant has filed this application for addition of Manisha Vivek Dhaigude as a party to the counter claim and prayed for amendment concomitantly.

05] Defendants to the counter claim (plaintiffs) strongly resisted the application arguing that the counter claimant without specifying the nature of relief against the third party cannot add the third party in the counter claim just to prolong the trial. Therefore, this application appears to be an attempt of counter claimant to prolong the trial by picking up the observations of the Court.

06] Having heard the rival submissions and having been infiltrated with the rival pleadings, following points arise for my determination and I record my findings against each of them for the reasons enumerated below;

Sr. No.	Points	Findings
1]	Whether third party Manisha Vivek Dhaigude is necessary party to the counter claim ?	... Affirmative

2]	Whether counter claimant has prayed any relief against third party Manisha Dhaigude ?Negative.
3]	What Order ?	As per final order.

AS TO POINT NO. 1:

07] Needless to repeat that, it is the claim of counter claimant that she had sold the suit property to third party Manisha Dhaigude in contravention of provisions of Fragmentation Act, 1947. Therefore, the title of Manisha Vivek Dhaigude is defective. It is the further claim of counter claimant that the plaintiffs in the suit had purchased the suit property from Manisha Vivek Dhaigude, therefore, the title of plaintiffs over the suit property is also defective being in contravention of the Fragmentation Act, 1947.

08] Needless to mention that this Court has already observed under Order below Exh. 89 that Manisha Vivek Dhaigude being the purchaser of suit property from counter claimant and being the vendor of the plaintiffs in the suit is necessary party to determine the contravercy between counter claimant and plaintiffs in the suit. Resultantly, this point need not stretch further to the unnecessary discussions. Hence, I answer point no. 1 in affirmative that third party Manisha Vivek Dhaigude is necessary party to the instant counter claim.

AS TO POINT NO. 2 :

09] Under the head of point no. 2 it is to be seen that whether

counter claimant has prayed any relief against the third party Manisha Dhaigude. It is worth to mention that the Manisha Dhaigude has purchased the suit property from the counter claimant itself. Now, the counter claimant who was the vendor of Manisha Dhaigude himself has prayed that the sale deed executed by herself is under the conflict with Law of Fragmentation and thus, it was illegal since the execution hence, it did not pass valid title in favour of third party Manisha Dhaigude. Resultantly, the plaintiff who purchased the suit property from Manisha Dhaigude has no valid title.

10] It is worth to mention that the Hon'ble Apex Court has settled the law on this point giving rise the ratio of ***Suhrid Sing @ Sardool Sing V/s. Randhir Sing and others, AIR 2010 (SC) 2807*** wherein the Hon'ble Apex Court was pleased to rule that where the executant of a deed wants to annul a deed, he has to seek cancellation of the deed first and then claim other rights. But, if a non executant seeks annulment of a deed he has to seek a declaration that the deed is invalid or non-est, illegal or that it is not binding on him.

11] It is worth to mention that the counter claimant being the executant of the sale deed to the third party applicant is praying that the sale deed executed by her in favour of third party was illegal. It is worth to mention that without making any prayer as to cancellation of said sale deed against the third party, the counter claimant has blatantly prayed induction of third party in the suit just catching the words of Court that it is necessary party to the counter claim.

12] Having been considered the Law on this point, I am to state that, the counter claimant may be having bundle of rights against the third party Manisha Dhaigude but, those rights are independent. That the counter claimant in present suit against the plaintiff cannot claim cancellation of sale deed executed between herself and third party. Resultantly, the instant application to add the third party applicant in the suit only catching the words of the observations of this Court but, without claiming any substantial relief against the third party appears to be fruitless and futile. In fact, it is just killing the time during trial.

13] Resultantly, I am of candid view that unless the counter claimant come with specific case for cancellation of sale deed executed by herself in favour of third party Manisha Dhaigude, she cannot be added as party in the counter claim. Resultantly I answer point no. 2 in negative and in answer to point no. 3, I reckon to pass following order;

:: ORDER ::

01. Application is rejected with costs of ₹ 500/-.

Place : Ambajogai.
Date : 20/08/2024.

(Z. Z. Khan)
Jt. Civil Judge (Junior Division),
Ambajogai (MHBI06-2196)

:: Certificate of Stenographer ::

"I affirm that the contents of this PDF file are word to word as per original Judgment."

Dictated On : 20/08/2024.

Transcribed On : 20/08/2024.

Checked & Signed On : 21/08/2024.

Date : 21/08/2024.

Place : Ambajogai.

Sd/-

(Akash Kabne)

Stenographer (Grade – 3)

Jt. C.J.J.D. & J.M.F.C., Ambajogai.