

MHCO120000012024



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE, AT PUNE

Dispute No.01/2024

Mr. Deepak Ghansham Firke & Others

----- Disputants

V/s.

Mantra Moments Co-operative Housing Society Ltd. ----- Opponent

ORDER BELOW EXH.9

(Dictated and pronounced on 05/04/2024)

1] This is an application filed by the opponent No.1 for addition of party namely Mr. Rohit Ghansham Gupta as party opponent No.2, on the grounds more specifically mentioned in the application Exh-9. Mainly on the ground that, the opponent is co-operative housing society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and sub-classified as tenant co-partnership housing society. The disputants are its members. Disputants are residing in the flats purchased by them from the builder M/s. Mantra Properties and Developers Pvt. Ltd.

2] The disputants have not purchased separate car park along with their flats from the builder. The disputant rely upon the copy of the agreement of one of the disputant filed along with Exh-3. That many of the members of the society are having their covered parking in the society who have purchased the area of parking along with their flats from the builder. There is huge open space around the building of the opponent society. The society is well covered by the fencing and compound wall. There are many other members who have not purchased car park from the builder, however most of them are having cars. It is pertinent to note

that, the society in spite of repeated requests and applications has not framed the rules for allocation of the parking spaces available other than the parking spaces which have been purchased by the members from the builder. However, the entire open space was open to sky till few months back. Some of the members of the opponent society including some of the managing committee members also have started using the said car parking space as if they owned the same and they have purchased the same.

3] The disputants were not aware whether those members have actually purchased the said car parking space or the area of the open space from the builder and finally when the disputants got the knowledge the members who are using open spaces for parking their respective cars have not purchased the respective space for parking of their car from the builder and are using the same without the permission of the society.

4] It is pertinent to not that, the builder has executed conveyance deed in respect of land and building in favour of the opponent society. Therefore, the society is the sole owner of its entire property including the land and open spaces in the vicinity of the society.

5] However, the builder namely Mr. Rohit Ghansham Gupta, age about 40 years occupation business R/o pune who is partner with the opponent No.1 in Mantra Properties and Developers has executed conveyance deed in respect of land and building in favour of the opponent society is necessary to be added as party defendant / opponent for just full adjudication of the present dispute regarding the allocation of land and parking space in favour of appropriate members / residents.

6] This application is objected by the disputant on the ground that, if the opponent thinks it proper to join the developer as party opponent, this court may pass appropriate order. Considering the issue of misjoinder of parties.

7] Heard Ld. Adv. Smt. D. G. Deshmukh for the opponent society at length.

8] Heard Ld. Adv. Shri. J. V. Khurjekar for the disputant at length.

9] Ld. Adv. For the disputant relied upon the ratio laid down by there lordship in the case of Moreshar Yadaorao Mahajan V/s. Vyankatesh Sitaram Bhedi (D) Thr. Lrs & Ors. Reported in 2022 (6) ALL MR 787 (S.C.)

para 20---For being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

10] It is pertinent is not that, this application is filed by the opponent No.1 society for addition of new party opponent No.2 Mr. Rohit Ghansham Gupta who is builder of the building of opponent No.1 society.

11] The disputant is master of his case and if, disputant thinks that, any person is necessary party to the proceeding then, he has to make him as party. In the case in hand disputants have not filed the application for addition of parties also, the builder Mr. Rohit Ghansham Gupta has not filed application to add him as a party opponent in such contingency in my view the opponent society has to take the objections of Non-joinder of necessary parties in its written statement and opponent No.1 society has already taken this objection in its written statement Exh-11, then also disputant has not think it proper to add Mr. Rohit Ghansham Gupta as party opponent and disputant wants to proceed with this dispute as it is.

12] In my view opponent society only has to point out the defect in the dispute, if any and it is not permitted to rectify the defect in the dispute application by the opponent No.1 society. The disputant is master of his case and if, at the end of trial it was proved that, Mr. Rohit Gupta is

necessary party to this proceeding then, disputants will have to suffer the consequences and it is not permitted and expected on the part of opponent No.1 society to cure the defect in the proceeding filed by the disputant.

13] If at the instance of opponent No.1 society Mr. Rohit Gupta is added as party to this proceeding then, that will amount to withdrawal of the rights of Mr. Rohit Gupta to take the defence that, he cannot be party to the dispute filed under Sec.91 of the M. C. S. Act, 1960.

14] With due respect to the ratio laid down by there lordship in the case of Moreshar (cited supra), it is held that, this ratio is not helpful to the opponent No.1 as the fact of this case and fact of case before there lordship was totally distinct and different. There lordship has not directed to add any person as party to the suit it was held that, in absence of necessary party the effective decree cannot be passed.

15] In view of above discussion, I proceed to pass following order.

ORDER

1] Application Exh-9 is rejected.

2] No order as to cost.

Date:05/04/2024

Place: Pune .

(A.S.Wanve)

Judge,

Co-operative Court No.2,Pune