

Order below Exh.21 in Reg.C.S. No.13/2019.

(CNR No. : MHDH06-000335-2019)

This is an application moved by plaintiff under Order 1 Rule 10(2) of the Code of Civil Procedure to join Yuvraj Dhudku Patil as a defendant No.5 in the present suit.

2) According to the plaintiff, present suit is filed for declaration and injunction. Defendants have raised objection in their written statement that plaintiff has not joint Yuvraj Dhudku Patil as a party, who is necessary party and accordingly issue framed in this respect. Plaintiff has mentioned in the plaint about Yuvraj Dhudku Patil, however, inadvertently he not joined as defendant, therefore, plaintiff prayed for add him as a defendant No.5 contending that he is necessary party and his presence is necessary to decide real controversy between the parties.

3) This application strongly opposed by defendants by filling their say below Exh.23 and submitted that the present application is not tenable and which is filed to fill up the lacuna. It is further contended that plaintiff has not joined intentionally to Yuvraj Dhudku Patil as a party. Defendants have raised objection in their written statement about the same and accordingly issue in respect of the same is framed. Now plaintiff want fill up the lacuna which is not permissible. Lastly, prayed for rejection of the application and alternatively prayed for cost if application allowed.

4) Perused the application and say filed by defendants. Heard both side at length. It is contention of the plaintiff that Yuvraj Dhudku Patil is necessary party to this suit and inadvertently plaintiff has not joint him as a party.

5) I have gone through the pleading of both parties. The general rule in respect of impleadment of parties is that the plaintiff in a suit, being '**dominus litis**', may choose the persons against whom he

wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not party has no right to be impleaded against wishes of the plaintiff. It also requires to join any party that the proposed party must be necessary to the suit and in whose absence no effective decree can be passed. But this general rule is subject to the provisions of Order 1 Rule 10 (2) of Code of Civil Procedure, which provides for impleadment of necessary or proper parties. The said sub rule provides that-

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

6) The said provision makes it clear that a court may, at any stage of proceedings, either upon or even without any application, and upon any conditions which court deem fit, direct that any following persons may be added as party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit.

7) A necessary party is a person who ought to have been joined as party and in whose absence no effective decree could be passed at all by the court. The proper party is a person in whose absence effective decree can be passed but his presence is necessary in the suit.

8) I have gone through the pleading of both parties. It appears from the plaint that plaintiff has made prayer against Yuvraj Dhudku Patil also. It is also contended by the plaintiff in the plaint that defendants along with Yuvraj Dhudku Patil have illegally mutated their name in suit property. The 7/12 extract of the suit property also shows that name of Yuvraj Dhudku Patil is mutated to the 7/12 extract of the suit property. Considering this contentions and documents it appears that Yuvraj Dhudku Patil is necessary party and in his absence no effective decree can be passed. His presence appears necessary to decide the real controversy between the parties. In this suit the evidence of plaintiff is yet to be begin. Therefore, the opportunity to adduce evidence or raise objection is available to defendants. Therefore, it appears that to decide real controversy between parties and to avoid multiplicity of the suit, it will proper to add Yuvraj Dhudku Patil as defendant No.5. This application filed after filling of the written statement by the defendants, therefore, the said delay should be compensated by imposing suitable cost. Hence, I proceed to pass the following order.

ORDER

1. The application Exh. 21 is hereby allowed subject to cost of Rs.400/- to defendants.
2. Plaintiff is permitted to join Yuvraj Dhudku Patil as defendant No.5.
3. Plaintiff shall carry out necessary amendment accordingly and shall file amended plaint on record till next date.

Date :- 20/01/2020.

(S. L. Vaidya)
Civil Judge (J.D.),
Shindkheda Dist. Dhule.

CERTIFICATE

I certify that the contents of this PDF File are word to word as per Original Judgment/Order.

Name of the Steno : Nilesh C. More,

Name of the Court : Court of C.J.J.D., Shindkheda.

PDF Uploading Date : 21/01/2019.

Sd/xxx
Stenographer