



Order below Exh.27 in Special Civil Suit No.27/2018
[CNR:MHKO050014112018]

Sunil Shivram Kolap
Vs.
Sachin Shivaji Kadam and Anr.

The present application is filed by plaintiff under the provisions of Order I Rule 10 of Code of Civil Procedure for adding Vishal Rangrao Pathare as defendant No.3 in the present suit.

2. Notice was issued to proposed defendant No.3. Accordingly, proposed defendant No.3 appeared by filing Vakalatnama (Exh.30) and Address Memo (Exh.29). He has filed say to the present application at Exh.41 and prayed that application be rejected.

3. Defendant Nos.1 and 2 have filed say to the present application at Exh.32 and prayed that application be rejected with costs.

4. Perused application and say. Heard learned advocates for both the sides.

5. It is the contention of the plaintiff that his application (Exh.15) for attachment of suit property filed under Order

XXXVIII Rule 5 is rejected by this Court and he had preferred Writ Petition against the said order and said Writ Petition is disposed of by the Hon'ble Bombay High Court on 21/01/2021 with observation that,

“2. In that view of the matter, in my opinion, petition no more can be entertained and as such is accordingly disposed of, however, this won't preclude the petitioner from taking such appropriate proceedings as are permissible and available in law.”

6. Further, it is the contention of the plaintiff that accordingly, now they want to add subsequent purchaser of the suit property Vishal Rangrao Pathare as defendant No.3. Hence, it is prayed that application be allowed and Vishal Rangrao Pathare be added as defendant No.3.

7. According to proposed defendant No.3, before execution of sale deed, he had issued public notice and no objection was received from any person and as such he has purchased suit property by registered sale deed by taking all necessary precautions. Hence, it is prayed that he is not necessary party to the present suit and it be rejected with costs.

8. According to defendant Nos.1 and 2, contents of the application are false. Moreover, plaintiff is not seeking specific performance of contract and he has filed suit for recovery of earnest amount. According to them, their economic condition was

not sound and therefore, they were in need to sale the suit property. But according to them, plaintiff refused to execute the sale deed and therefore, they have sold the suit property to defendant No.3. According to them, whether they are liable to refund earnest amount is yet to be decided on merit and therefore, the present application is not tenable. Further, according to them, if the third party is added, then it will lead to complications. Hence, they have prayed that application be rejected with costs.

9. On perusal of the application and plaint, it is the case of plaintiff that he has paid amount of Rs.21,00,000/- as earnest money. Further, it is his contention that defendant Nos.1 and 2 have no other property than suit property and it is disposed of by them to proposed defendant No.3. Therefore, according to plaintiff, if the suit is decreed, then there will be obstruction or delay in execution of that decree and it will cause prejudice to the plaintiff. The suit property is disposed of by defendant Nos. 1 and 2 during the pendency of the suit. It is the contention of plaintiff that he wants to file application under Order XXXVIII Rule 5 of C.P.C. against proposed defendant No.3 and if he is added as party to the suit, no prejudice will be caused to him and defendant Nos.1 and 2. Plaintiff is *dominus litis*. He can choose to whom he wants to add as a party to the suit. The present litigation is one in which right to immovable property is directly and specifically in question. Therefore, proposed defendant No.3

is a proper party, whose presence will enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom decree is to be made.

10. Under such circumstances, if the application is allowed, it will help to decide the real controversy between the parties and further it will avoid multiplicity of proceedings. In fact, it will help to do complete adjudication of the dispute. If the present application is allowed, no prejudice will be caused to the defendant Nos.1, 2 and proposed defendant No.3. In fact, it will help to decide the matter on merit. Hence, in view of the above discussion, the present application is liable to be allowed. Therefore, I proceed to pass following order -

Order

- 1) Application (Exh.27) is allowed.
- 2) Vishal Rangrao Pathare, is added as a defendant No.3 in the present suit.
- 3) Plaintiff to carryout amendment accordingly and to supply copy of amended plaint on or before next date.

Date :05-05-2022.

(Amit P. Kokare)
Civil Judge Senior Division,
Ichalkaranji, District Kolhapur