

MHKO050022512017



Reg.Civil Suit No.228/2017

Mahavir Kallu Bindage

... Plaintiff

V/s

Sarpanch, Grampanchayat Korochi & others ... Defendants

Order below Exh.23

1] This is an application filed by the third party applicants requesting to array them in the present suit as defendants under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure (CPC).

2] Shorn of irrelevant the contentions in brief of the third party applicants can be stated as that the plaintiff has brought the present suit for declaration to the effect that the notice issued by the Tahsildar, Hatkanangale bearing O.No. RTS/Mamlatdars Court Act/SR/9/2017 is illegal and for permanent injunction against defendants in the matter. In the circumstances, it is further contention of these third party applicants that the suit property made by the plaintiff is of Gat no.55 situated at Mouje Korochi owned by the plaintiff. On the Bandh of the suit property there is road.

3] Further it is the contention of third party applicants that through that road these applicants are having easement since long. As well the villagers are also having easement through that road. However, recently the plaintiff has made an obstruction in using that easement of the villagers as well as

third party applicants. It is their contention that if these third party applicants are not joined as a party to the present suit, then there will be no chance to them to raise their voice. For just decision of the suit according to them, they are necessary parties to the suit. They are being affected persons due to conduct of the plaintiff it is requested that they be joined as parties to the suit.

4] The application is strongly resisted by the plaintiff by filing his say on Exh.31. It is contended that the averments made by the third party applicants are totally baseless and not as to the actual facts. The averments made by the third party applicants are denied in toto. Specifically it is contended by the plaintiff through say that the third party applicants have arisen no cause of action to move the present application for the suit subject. Besides that it is submitted that there is no way adjacent or through the suit property. Therefore, no question of obstruction has arisen to the plaintiff for the use of the same. So also, the suit prayers if taken into consideration the limited prayer is made by the plaintiff that the notice issued by Tahsildar under the Mamlatdars Court Act under section 5(2) of the Act is illegal. So here in the present suit the third party applicants have no concern. Thus, the application is requested to be rejected with costs.

5] Upon having gone through the application and the say thereon, the following points arise for my consideration. I have recorded my findings thereon for the following reasons.

<u>Sr.No.</u>	<u>Points</u>	<u>Reasons</u>
1]	Do third party applicants prove that they are necessary to be joined as a	

parties to the suit and without their impleadment in the suit there will be no efficacious decision of the suit ?

No

2] What Order ?

As per final order.

REASONS

6] In order to substantiate pleadings the third party applicants have relied upon some documentary evidence. As well the plaintiff has also relied upon some documentary evidence. As and when necessary the documents will be referred at appropriate stage.

AS TO POINT NO.1 :-

7] Before embarking upon the facts of both parties, this court do find it apt and proper to see the contention under which the present application is moved by third party applicants. The provision is contemplated under Order 1 Rule 10(2) of the CPC. It reads as under -

“Order 1 Rule 10(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.”

8] Upon having gone through the above provision, it becomes crystal clear that the Court is empowered by virtue of this provision to add or struck out the party when it feels it necessary in order to do justice and in order to decide the suit efficaciously.

9] I have heard learned counsel Shri.R.V.Mudgal for third party applicants. He has vehemently made his submissions as per the contentions made by the third party applicants in their application. He requested to allow the application and submitted that the parties are necessary in order to decide the suit on merit.

10] The learned counsel Shri.R.V.Mudgal in order to buttress his submissions has placed reliance upon **Mulraj Khatau and Sons Ltd. Mumbai Vs Nagesh Samar Bahadur Singh and another reported in 2018(3) Mh.L.J. 54**, wherein it is held that when the construction by the tenant and the dispute is concerning of unauthorized construction by the tenant, then, the owner of the property will be a necessary party to the suit.

11] Latter on, learned counsel placed his reliance upon **Naween Kumar Singh Vs Indian Oil Corporation Limited, Mumai and Others reported in AIR 2018(NOC) 822 (PAT.)**. Upon perusal of the notes it is noticed that the whole judgment of the court has not been produced by the third party applicants. Relevant portion of the same is also not brought to the notice of this Court. Therefore, the notes of cases are not helpful to the case of the third party applicants.

12] The learned counsel Shri.V.B.Chavan argued on behalf of the plaintiff. He vociferously submitted that there is no force in the application moved by the third party applicants. Third party applicants are in no any concern with the suit property. Moreover, no evidence has been brought on record by the third party applicants that there is any road near Bandh of the suit property or through the properties of these third party applicants. The suit is filed for limited purpose. No grievance is made against these third party applicants. There is no possibility of order being passed against these third party applicants and therefore, there is no possibility of any prejudice to these third party applicants if they are not arrayed party to the suit. So, he strongly requested for rejection of the application moved by third party applicants.

13] The learned counsel Shri.V.B.Chavan in order to buttress his submission placed reliance upon **Devchand Constructions Vs Board of Trustees of the Port of Mormugao & others reported in 2006 (5) Mh.L.J.644**, wherein it is held that the impleadment cannot be to facilitate one of the defendants to widen the scope of the controversy involved in the suit.

14] Furthermore, learned counsel Shri.V.B.Chavan placed his reliance upon **Anita Soni Vs Smt.Minadevi Paneri judgment of Hon'ble Jharkhand High Court in W.P.(C) No.5237 of 2015**, wherein it is held that a purchaser pendente lite, who has purchased the suit property or a part of the suit property from another purchaser/purchaser pendente lite, has no right to equities and, thus, cannot be impleaded in a partition suit.

15] Upon hearing both parties and having given anxious consideration to the averments made by both parties in application and through the say, it is noticed that for addition of parties to the suit, the Court is required to take into consideration some important principles. The court is required to pay heed towards the issue that whether the party is necessary for determination of the real controversy between the parties in the suit ? Upon having given thoughtful consideration to this issue this Court do find it proper to appreciate the facts pleaded and supported by documents by parties.

16] Upon having given attention towards the prayer clause of the suit, it is noticed that the suit is for declaration that the notice issued by the Tahsildar be declared as illegal and for permanent injunction against defendants in the matter. The Tahsildar by virtue of section 5(2) of the Mamlatdars Courts Act is empowered to issue injunction. Here this Court do find it appropriate to reproduce section 5 (2) of the Mamlatdar Courts Act.

Section 5 of the Mamlatdars Courts Act-

5. (1) Every Mamlatdar shall preside over a Court, which shall be called a

Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [fixed by the State Government,—

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees

or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon ;

(b) to give immediate possession] of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh [to remove or cause to be removed any such impediment or], to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

(2) The said Court shall also, subject to the same provisions, have power within the said limits, [where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or], when any person is otherwise than by due course of law

disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees or crops or fisheries or in the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes or in the use of roads or customary ways thereto, to issue an injunction to the person [erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain [from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction.

(3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the [impediment to the natural flow of surface water or the] dispossession, deprivation or determination, of tenancy or other right occurred, or which the [impediment,] disturbance or obstruction, or the attempted 6 [impediment or] disturbance or obstruction, first commenced.

Explanation.— The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section.

17] On careful reading of section 5 of the Mamlatdar Courts Act, it becomes evident that the Tahsildar is empowered to remove or cause to be removed any impediment caused illegally to the natural flow of water or is

empowered to give immediate possession of any land or premises use for agriculture or grazing,etc. Therefore, if there is natural flow of water and impediment in it caused or in the use of agriculture any impediment is caused, the Tahsildar is empowered to remove the same. However, for that purpose it is found necessary that there must exist way to remove the obstruction or impediment.

18] But, it has not been brought to the notice of this court that there exists any way adjacent to the suit property or through the Gat numbers of the third party applicants. There is no iota of evidence to show that the obstruction is caused to the way by the plaintiff and the rights of easement of this third party applicants are being affected at the stage. Upon given careful attention to the prayer clause of the suit it is noticed that rights of third party applicants are in no way going to be affected even if the suit is decided without their impleadment in the suit.

19] I have perused the 7/12 extract of the plaintiff and 7/12 extract produced on record by third party applicants of their respective Gat numbers. I have also perused the map produced on record by the third party applicants. Upon perusal of all the documentary evidence this Court do find that there is nothing brought on record to show that there exists some way and to it obstruction has been caused. The first and foremost aspect of existence of way for the purpose for determination of the present application is the existence of way. That very aspect has not been brought on record by the third party applicants. They have not successfully convinced this Court by way of support of documentary evidence that their rights may be affected if they are not added to the suit and there is likelihood of any encroachment upon their rights if they are not added as

party to the suit.

20] Thus, upon going through all the above discussed aspects, it is noticed that the third party applicants have miserably failed to prove their claim as they are necessary party to the present proceeding. Hence, point no.1 is required to be answered in the negative. So, it is answered accordingly.

AS TO POINT NO.2 :-

21] Consistent with my findings recorded in point no.1, the application filed by the third party applicants deserves to be rejected. Hence, in consequence, the following order in the interest of justice is passed.

ORDER

- 1] The application (Exh.23) is hereby rejected.
- 2] Costs in cause.

Dt.30/01/2019
Ichalkaranji.

(S.A.Khalane)
Jt.Civil Judge, Sr.Dn.,Ichalkaranji.

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	V.P.Kadam
Name of Court	Mr.S.A.Khalane Jt. C.J.S.D. Ichalkaranji
Date of Decision	30/01/2019
Judgment/order signed by the P.O. on	30/01/2019
Judgment/order uploaded on	31/01/2019