



Order below Exh. 59 in
Regular Civil Suit No. 228 / 2017
CNR No. MHKO050022512017
(Passed on 20-04-2022)

This is an application filed by third party applicants requesting to add them in the present suit as defendants under Order I Rule 10 and section 151 of the Code of Civil Procedure.

2. Third party applicants have submitted that, they are permanent resident of village Korochi, Taluka Hatkanangale, District Kolhapur. They are farmers and having agricultural lands in village Korochi as mention in para 1 of said application i.e. Property No. 1A, 1B, 1C and 1D. Applicant along with this application has filed a annexure which shows the name of villagers and possessed agricultural land. Property No. 1D as shown in map, which is attached with this application is part and parcel of this application. Property No. 1D is approach road to the tar road which has been used by Plaintiff, third party applicants and other peoples and also their predecessors for agricultural purpose. Said road has been also used for ingress and egress of bullock cart, tractor, other agricultural equipment and agricultural products.

3. They further submitted that, there is a factual position as stated above, Plaintiff has created obstruction in using property 1D by ploughing land, cultivating grass and keeping stones and soil in said area. Against the said act, they

have filed complaint application before Tahasildar, Ichalkaranji. 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. 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 at Exh. 63. It is contended that, the averments made by the third party applicants are totally false and incorrect. 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. Considering 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>Findings</u> |
|----------------|---|------------------------------------|
| 1 | Do third party applicants prove that they are necessary parties to the suit ? | No. |
| 2 | What order ? | Application (Exh. 59) is rejected. |

REASONS

6. I have heard learned counsel Shri. Belekar for third party applicants. He argued 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.

7. The learned counsel Shri.V.B.Chavan argued on behalf of the plaintiff. He submitted that there is no force in the application moved by the third party applicants. Already the application by some of third party applicant came to be rejected. 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. No prayer has been asked against third party applicants. So, he strongly requested for rejection of the application.

AS TO POINT NO. 1 :-

8. 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 (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.

9. On careful reading of section 5(2) 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.

10. 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 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.

11. On perusal of record; it is seen that already the application filed by some of third party applicants for adding them as a party as been rejected on the ground that on perusal of 7/12 extract of the plaintiff, 7/12 extract produced on record by third party applicants of their respective Gat numbers and the map produced on record by the third party applicants 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. That very aspect of existence of way 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. Here it is important to note that the third party applicants have suppressed material fact that already their application for them adding as a party has been rejected by this Court. Hence, now there is no new ground has been brought on record to add them as party to suit.

12. It is important to note that already owners of gat no. 51, 63 and 66 have previously filed an application for adding them as a party at exh.23. The application at exh.23 came to be rejected on merit. The application was rejected by specifically mentioning that third party applicants were failed to prove the existence of road in suit property. The order below exh.23 has not been challenged. So it is intact. Third party

applicants have knowledge of this order. But they have suppressed the previous order passed in their application. Hence, considering all these above said reasons when already the application has been rejected and it has not challenged, the same application does not deserve to be allowed.

13. 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 -

14. In view of negative finding to point no.1, the application filed by the third party applicants deserves to be rejected. Hence, the following order is passed.

ORDER

The application stands rejected.

Dt. 20-04-2022.

Ichalkaranji.

(D. T. Patil)
Jt.Civil Judge, Sr.Dn.,
Ichalkaranji.