

**Reg. Civil Suit No. 47/2007.**

**ORDER PASSED BELOW EXH. 87**

1. This is an application filed by third person for impleadment as defendant in the suit vide Order I Rule 10 of Civil Procedure Code. According to him, deceased defendant No.1 Anant Karve is died on 26.09.2013. Before that he executed agreement for sale in respect of his share in suit property in favour of present applicant on 26.3.2006. It was agreed that sale deed would be executed after measurement of the property under said agreement. Meanwhile, several disputes developed between deceased and plaintiff which are pending before civil and revenue Courts. Applicant has expended lakhs of rupees for the litigation on behalf of deceased Anant Karve. The legal representatives of deceased Anant Karve are on record in present suit. Satish Chougule, one of the heirs received part of consideration from the applicant under agreement. Now the legal representatives and heirs are avoiding execution of sale deed in favour of the applicant. Legal representatives of deceased Anant are likely to collude with the plaintiff. They are not supporting the applicant. The applicant further submitted that according to deceased Anant, the suit property was partitioned between Karve family. In such circumstances, now the plaintiff may withdraw the suit to defeat right of applicant. Applicant has filed Special Civil Suit No. 17/2014 against legal heirs of deceased Anant and plaintiffs for specific performance of agreement for sale and partition also. Thus, applicant is having equitable interest in share of deceased Anant Karve which he wants to enforce. Hence, application for impleadment in the suit.

2. The plaintiff filed his say vide Exh. 91 and resisted application. According to the plaintiff, alleged agreement for sale does not create any interest in favour of applicant because agreement for sale creates right to seek its performance only. Accordingly, applicant has filed the suit. Unless the plaintiff has legal interest in the suit property, he is not entitled to be impleaded as party in the suit under Order I Rule 10. Hence, application be rejected with costs.

3. I have heard Mr. U.V. Kulkarni for the applicant and Mr. U.M. Kulkarni for the plaintiff at some length. The applicant filed copy of agreement for sale executed between him and deceased Anant Karve and another agreement for sale executed by heirs Raja Karve and Deelip Karve in his favour. He also submitted copy of Special Civil Suit No. 17/2014 instituted by him against the legal heirs of deceased Anant and present plaintiff and defendants for specific performance and partition.

4. The advocate U.V. Kulkarni while arguing for applicant submitted that applicant is having equitable interest in share of deceased Anant and his legal heirs. Plaintiffs and defendants are likely to defeat right of applicant. Therefore, applicant may be impleaded as a defendant to enforce his right. Per contra, Advocate U.M. Kulkarni for the plaintiff submitted that already the applicant has sought a relief against the legal heirs of deceased Anant through Special Civil Suit No. 17/2014 which is pending as on today. Further, mere agreement for sale does not create interest in the property. Unless person has interest in suit property, he can not be impleaded either as a plaintiff or defendant. The applicant is neither necessary party nor proper party. Hence, application be rejected. He also placed reliance on ruling of the Hon'ble Bombay High Court in case of Gopikabai Malewar and another Vs. Bapurao Surkar, reported in 1995(2) Mh.L.J., wherein question of

impleadment of third party at the instance of defendant in a suit for possession was discussed.

5. In light of aforesaid submissions it is imperative to consider object of Order I Rule 10 of Code of Civil Procedure. The object of impleading third person in the suit as enunciated under Order I Rule 10 is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any inconvenience and to avoid multiplicity of proceedings, expenses of separate trials and to settle all the questions of adjudication involved in the suit. Another object is to discourage contents or technical pleas and to save honest and bona fide claimant from being non suited.

6. It appears that present applicant has instituted Special Civil Suit No.17/2014 against plaintiffs and legal heirs of deceased Anant Karve after institution of this suit. Plaint in that suit as produced by applicant reveals that he has sought relief of specific performance and partition. The plaintiff having knowledge of this suit has made prayer in aforesaid Special Suit even anticipating both situations of either dismissal or decretal of present suit. Therefore, question of avoiding multiplicity has come to an end.

7. Now the question of interest of applicant in present suit needs to be considered. It is settled that agreement of sale does not create interest. It creates right to obtain another document i.e. sale deed. This right has already been sought to be enforced by the applicant by filing Special Civil Suit No. 17/2014. It is not the case wherein applicant holds executed sale deed in his favour from either deceased Anant Karve or his legal heirs. In that case situation would have been different. The interest of applicant would be acquired and crystallized in case of decree for partition or

specific performance. A fact cannot be overlooked that present suit is for partition between Karve's only. The plaintiff has not claimed any relief against applicant in present suit. Therefore, effective decree can be passed without the presence of applicant. Presence of applicant is not necessary particularly when applicant has instituted separate suit to seek his relief. Therefore, for want of interest in present suit, the applicant can not called as either necessary or proper party.

8. Furthermore, it is well settled that there is no jurisdiction to add party merely because that would save third person from expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the suit in which he seeks intrusion. A person may not be added as a defendant merely because he would be incidentally affected by the judgment. As a rule, the Court should not add a person as a defendant in suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is a *dominus litus*. He can not be compelled to fight against whom he does not wish to fight and against whom he does not claim any relief. (Banarsi Dass Vs. Panna Lal, MANU/PH0041/1969)

9. In view of aforesaid facts of the case and discussion, I am of the opinion that impleadment of applicant in the present suit is not necessary. Therefore, I pass following order.

**ORDER**

Application is rejected.

Jaysingpur.  
Dt.: 04.08.2016.

Sd/-  
**( N.M. Bandgar )**  
2nd Jt. Civil Judge Junior Division,  
JAYSINGPUR.

I affirm that the contents of this P.D.F. file Order/Judgment are same, word to word, as per the original Order/Judgment.

Name of the Stenographer	Akaram Shripati Tiruke
Name of Court	2nd Jt. Civil Judge Jr. Dn. and Judicial Magistrate First Class, Jaysingpur, Dist.-Kolhapur.
Date of dictation	04.08.2016
Order/Judgment signed by the P.O. on	04.08.2016
Order/Judgment uploaded on	05.08.2016