


MHKO070021612018 	<b><u>ORDER BELOW EXH.36 IN REGULAR CIVIL SUIT NO. 230/2018.</u></b> Nayku Ramu Khondre Vs. Collector of Kolhapur, Kolhapur
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The application is filed by the third parties, namely Jyotiram Khondre and Manohar Jyoti Khondre, under Order I Rule 10(2) of the Code of Civil Procedure, seeking to add them as defendants. The plaintiff has filed his say (Exh.38) and objected to the application.

2. Heard the learned advocate for the third parties and the learned advocate for the plaintiff. The learned advocate for the third parties has submitted that the plaintiff is the brother of the third party, Jyoti Ramu Khondre, and the uncle of Manohar Jyoti Khondre. The suit property is their ancestral property. However, disputes have arisen between them regarding the suit property, which are pending before the Civil Court as well as the Revenue Court. The third parties have title over the suit property. However, in order to deny their rights, the plaintiff has not joined them as necessary parties in the present suit. He has further submitted that the title and interest of the third parties are involved in the suit property. Therefore, the third parties are necessary parties in the present suit, and their presence is essential for passing an effective decree. According to him, if they are not joined as defendants, their rights over the suit property may be adversely affected. Therefore, the learned advocate for the third parties has prayed that they be impleaded as defendants.

3. On the other hand, the learned advocate for the plaintiff submitted that the third parties are not necessary parties in the present suit. He further submitted that the defendants had issued a notice to

the plaintiff on 05.12.2018, alleging that he had encroached upon a public road and directing him to remove the said encroachment. Therefore, the plaintiff has filed the present suit against the defendants seeking a decree of permanent injunction restraining them from demolishing his the house, the cowshed etc. and thereby restraining them from evicting him from the suit property. The plaintiff has also sought a permanent injunction restraining the defendants from changing the nature and condition of the suit property until the final decision of the Hon'ble Bombay High Court in Second Appeal No. 176 of 2006. As the suit has been instituted for a permanent injunction restraining the defendants from acting in pursuance of the notice dated 05.12.2018, the presence of the third parties is not necessary for the effective adjudication of the present suit. Hence, he has prayed for rejection of the application.

4. Order I Rule 10(2) CPC empowers the Court to add any person as a party if their presence is necessary to effectively and completely adjudicate all questions involved in the suit. It is well settled that 'necessary parties' are those parties whose presence before the Court is indispensable for the proper and final determination of the matter. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit. Therefore, it is required to determine whether, in the absence of the third parties, an effective and complete adjudication of the dispute can take place.

5. On perusal of the record, it appears that the defendants had issued a notice dated 05.12.2018 to the plaintiff, alleging that he had encroached upon a public road and directing him to remove the

encroachment. Therefore, the plaintiff has filed the present suit to seek protection from eviction. The said facts indicate that the cause of action to institute suit arises because the defendants sent a notice dated 05.12.2018 to the plaintiff, threatening eviction on the ground of encroachment on a public road. Thus, the present lis is confined to the plaintiff and the defendants in respect of the legality and validity of the action of the defendants. Moreover, the plaintiff has not sought any declaration to the effect that he is the sole owner of the suit property or that the third parties have no right therein. The suit is only for injunction to avoid action of the defendants as per notice dated 05.12.2018 and not for the adjudication of title between the plaintiff and the third parties. Therefore, the presence of third parties is not necessary for the complete and effective adjudication of the present suit. Consequently, the third parties are not necessary parties to the present suit.

6. The third parties have claimed right, title and interest over the suit property. However, that alone is not enough to make them necessary parties in the present suit. In order to join them in the suit they have to prima-facie show that their presence is necessary for effective adjudication of the present suit. As discussed above, cause of action to file present suit arose because of alleged notice of the defendants. The third parties could have challenged the said notice by alleging their title over the suit property. However, it is evident that the third parties have not specifically stated in their application that the notice issued by the defendants is illegal or that they want to lead evidence to prove the illegality of the notice. They have not specifically alleged that on the basis of alleged notice, the defendants are trying to dispossess them from the suit property. Instead, they have mainly alleged that in order to deny their rights, the plaintiff has not joined

them as necessary parties in the present suit. Furthermore, they want to join as defendants and not as plaintiffs. These facts show that the third parties want to contest the plaintiff's contentions, and want to establish their title over the suit property and do not want to contest the action taken by the defendants. In such a situation, if they are added as defendants, the present injunction suit will turn into a title dispute between the plaintiff and the third parties, which is not proper. It appears that the title suit between the plaintiff and the third parties is already pending before the Hon'ble Bombay High Court in Second Appeal No. 176 of 2006. Therefore, they cannot even be joined as proper parties in this suit.

7. The third parties have alleged that they were unaware about the present suit. However, it is not specifically alleged by the third parties that they were unaware about the alleged action of the defendants. Furthermore, they have not alleged that they were unaware about the alleged notice issued by the defendants. If the third parties wanted to challenge the said notice and alleged action of the defendants, they could have done so immediately. However, it does not appear that they challenged the notice or action of the defendants till the filing of the present application. As discussed above, they have not specifically alleged that they were unaware about the alleged action of the defendants. This shows that they remained silent for a long time. Furthermore, on perusal of the record of the present suit, it appears that both the parties have completed their evidence and suit is fixed for final argument. In such circumstances, it is not legal and proper to add the third parties in the present suit only on the ground that their interest is involved in the suit property. If third parties are added as defendants in the present suit, it will cause unnecessary delay in the disposal of the case. Therefore, it is not legal and proper to join them as

defendants in the present suit.

8. In view of the above discussion, it is clear that the third parties are neither necessary nor proper parties, as an effective decree can be passed in their absence without prejudicing their claimed rights. The rights of the third parties will be decided in Second Appeal No. 176 of 2006. Therefore, no prejudice will be caused to the third parties if the decree is passed, as it would bind only the defendants and not affect collateral title claims. Hence, it would not be just and proper to implead them as defendants. Therefore, the application deserves to be rejected. Hence, I pass the following order:

**ORDER**

The application (Exh.36) is rejected.

**( P. A. Patil )**

Date: 18.04.2026.

Jt. Civil Judge Senior Division,  
Jaysingpur.