

REGULAR CIVIL SUIT NO.59/2018.**(CNR NO. MHKO11-000484-2018)****ORDER PASSED BELOW EXHIBIT NO.38**

01. The present applicant has filed instant application under Order 1, Rule 8(a) and 10(2) of the Code of Civil Procedure, 1908, for joining him as a co-plaintiff in the present suit.

02. By this application, the present applicant has contended that, the plaintiffs have instituted representative suit and thereby issued public notice for claims of the public at large. Accordingly he has filed instant application. The suit property is originally owned by the Shikshan Prasarak Mandal Kolhapur which is meant for the educational and social purpose. The late Barrister Balasaheb Hanmant Khardekar-Nimbalkar are the founder of the said institution. It is further contended that, the present third party applicants are the legal heirs of the late Barrister Balasaheb Hanmant Khardelar-Nimblakar. They have established a new trust for the welfare of the society. However the local committee have no concern with the old trust which is established by the late Barrister Balasaheb Hanmant Khardelar- Nimblakr. It is also contended that the local committee have unlawfully alienate the property of the said educational institution. Therefore they are required to be restrained. In such circumstances, according to her he is necessary party in the instant suit. It is also contended that the instant suit is representative suit and therefore third party applicant has interest as legal heirs of the founder of the defendant No.3 institution i.e. late Barrister Balasaheb Hanmant Khardelar- Nimblakr. Thus on these background, the present applicant has prayed to implead her as a co-plaintiff in the instant suit.

03. The plaintiff has not seriously objected the instant application by filing their say on same application. The defendants have contended that present defendant No.3 are the trustee of the defendant No.3 institution. The third party are interested to prolonging the matter for one and another reason. The property mentioned in the instant suit is separate property. Therefore, present third party applicant is neither proper, nor necessary party. Thus, according to the defendants, the present applicant has no concern whatsoever with the property mentioned in the suit. Therefore, they have prayed for rejection of the instant application.

04. I have heard the learned advocates for the respective parties at length.

05. It is settled law that it is open for the Court to add any such person as a necessary party in the suit to enable to the Court to effectively adjudicate the question involved in the suit. However, for exercise of power under Order 1 Rule 10(2) of the Code of Civil Procedure, it has to be seen as to whether the party is necessary party or proper party. A necessary party is one without whom no order can be made effectively and proper part is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the suit.

06. The learned advocate for the defendant has argued that the presence of the present applicant is absolutely not necessary, because the nature of the suit is different and also reliefs are also different. Therefore, the applicant is neither necessary, nor proper party. In such circumstances, if the present applicant is impleaded as a party to the

instant suit, there would be complications in the matter. It is further argued that the third party applicant is entitle to institute separate suit in respect of his grievances.

07. While per contra, the learned advocate for the applicant argued that the presence of the applicant is necessary, as their predecessor late Barrister Balasaheb Hanmant Khardelar- Nimblakr had established the defendant No.3 institution for the educational purpose. It is also contended that after demise of the late Barrister Balasaheb Hanmant Khardelar-Nimblakr, the defendant No.3 has unlawfully alienate the trust property. The dispute involved in the present matter is one of the unlawful act of the defendant No.3.

08. On perusal of record it transpires that, the plaintiffs have filed instant suit for relief of declaration and perpetual injunction in respect of transaction in between defendant No.1 and defendant No. 2,3. It is also contended that suit property is specially reserved for play ground for public at large. However, defendants are unlawfully about to change the reservation of suit property and alienate for private profit. It is contended that suit property is owned by Shikshan Prasarak Mandal, which was established by late barrister Balasaheb Hanmantrao Khardekar-Nimbalkar and present third party applicant are the legal heirs of said late barrister Balasaheb Hanmantrao Khardekar-Nimbalkar. The said facts are admitted by both the parties. Therefore, present third party applicant has well **nexus** with the suit property and Shishan Prasarak Mandal. Per contra learned advocate for the defendants have contended that the late barrister Balasaheb Hanmantrao Khardekar-Nimbalkar had hand over charge of the Shikshan Prasarak Mandal to the late Malharrao Desai. Therefore,

present third party applicant has not concern with the Shikshan Prasarak Mandal nor with the suit property and therefore, the present applicant is neither necessary, nor proper party. However, on perusal of record, it is seen that the present plaintiffs have filed present suit for declaration and perpetual injunction in respect of alleged reservation over the suit property. The suit property is originally owned by Shikshan Prasarak Mandal, Kolhapur. Shikshan Prasarak Mandal, Kolhapur is the educational Institution for society at large. The said Shikshan Prasarak Mandal, Kolhapur was established by late Balasaheb Hanmantrao Khardekar-Nimbalkar in the year 1945. The present third party applicants are legal heirs of said late Balasaheb Hanmantrao Khardekar-Nimbalkar. Therefore, the property of Shikshan Prasarak Mandal is Solely created for the spread of education. In such circumstances, it can not be said that the suit property involved in the present suit is a separate property from the late barrister Balasaheb Hanmantrao Khardekar-Nimbalkar. Thus it is seen that present applicants have prima facie nexus with the suit property and Shikshan Prasarak Mandal Kolhapur. On this aspect I would like to place reliance on ratio in **Yogesh Balaji Misar Vs. Keshav Vistari Sontakke and Ors., 2014 (3) LJSOft 9**, wherein the Hon'ble Bombay High Court held that -

4. The provision of Order 1 Rule 10(2) of the Civil Procedure Code permits the Court to add any person whether as a plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon the settle all the questions involved in the suit. Merely because the transfer, during the pendency of the suit, is hit by the principle of lis pendens that cannot operate as bar for the Court to exercise power under Order 1 Rule 10(2) of the Civil Procedure Code to permit subsequent purchaser for being added as a plaintiff. The petitioner has stated that he

has stepped into the shoes of the plaintiffs and hence, he needs to be provided an opportunity to prosecute or contest the suit, so as to settle all questions involved in the suit. The trial Court has erred in rejecting the application Exhibit 37, which needs to be quashed and set aside.

On these background, I am of the considered view that the reliefs claimed by the plaintiff, would directly affect the rights of the third party applicant. So also to avoid multiplicity of proceeding instant application required to be granted.

09. So far as the contention of the learned advocate for the defendants that the third party applicant has no concern with the suit property or suit does not hold water.

10. Thus, having considered above discussed aspect, the instant application is deserves to be allowed. Hence, I proceed to pass the following order.

-: ORDER :-

1. Application Exhibit 38 is allowed.
2. The plaintiffs are directed to make the present applicant as a party to the suit, in array of plaintiff.
3. The plaintiff to that effect shall amend the plaint and file the amended copy of the plaint within the period of 14 [fourteen] days from today.

Date.10.08.2018.

Sd/-
(S.M.Jadhav),
2nd Jt. Civil Judge, Junior Division,
Peth-vadgaon.

CERTIFICATE.

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

Name of the Stenographer	:-	Sou. Rajashari Rajendra Sawant(L.G.)
Name of Court	:-	Shri.S.M.Jadhav 2 nd Jt.Civil Judge, Jr.Dn., and J.M.F.C. Peth-Vadgaon.
Date of Dictation	:-	10.08.2018.
Judgment signed by the P.O. on	:-	10.08.2018.
Judgment uploaded on	:-	13.08.2018.