

**ORDER BELOW EXH. 123 IN R.C.S. NO. 08/2008**

Krupa Maruti Hallikar Vs. Benjamin Tatoba Dhupdale, etc.

This is a suit for partition, possession and perpetual injunction. By this application filed under Order I, Rule 10(2) of the Code of Civil Procedure, 1908, the plaintiff seeks to add in all six persons whose names are mentioned in clause 6 of the application. one Shubhakaran Dhanpatram Varma as a defendant to the present suit. It is contended in the application that during the course of evidence, by way of admission it has come on record that the suit property is disposed off by the defendant during pendency of this proceeding to the said Shubhakaran Varma by registered sale deed and in view of the said assignment of interest in the suit property, said Shubhakaran Dhanpatram Varma is a necessary party to the suit and accordingly his impleadment in the suit as a defendant is prayed. The application is not supported with affidavit.

Despite opportunity was granted, the defendant in the suit failed to file his say to the application. In response to show cause notice issued to the proposed party to be impleaded, he appeared and filed his say below Exh. 44, wherein he contended that the plaintiff has filed the present suit without description of the suit property in absence of boundaries. On 15.10.2011, he purchased the land from Gauri Builders through proprietor Bharatsing Shantaramsing Rajput by registered sale deed presently he is in possession of the said land and the plaintiff has no concern nor interest in the said land the suit of the plaintiff is false to that extent. He prayed to dismiss the suit with compensatory costs.

Heard.

Though the plaintiff failed to quote a provision under which he maintained the application, still from the perusal of the application it can be

gathered that the same is filed under Order XXII, Rule 10 of the Code of Civil Procedure. It is pertinent to note that the description of the suit property is given by the plaintiff in Para No. 1 of the plaint. On perusal of Para No. 1 of the plaint, it can be noticed that the plaintiff is vague beyond every limits in mentioning the correct survey number, gat number, plot number etc. of the suit property sufficient to identify it. It is worth to mention here that the suit is though for perpetual mandatory injunction, it is in the light of one alleged transaction took place with the defendant builder in respect of a residential premise. According to the plaintiff out of the total ascertained consideration amount, he paid an earnest money and thereby the defendant had agreed to execute a sale deed in respect of that residential premise, however, the defendant could not complete the construction within the time period. The plaintiff, in the plaint specifically pleaded that he is and was ready to perform his part of agreement. Again at the cost of repetition, it is embossed that the suit is of perpetual mandatory injunction and not for specific performance of contract. In such type of suits, description of the property is necessarily to be given so clearly enough to identify the same. However, no such description of the property is given. Even the plaintiff did not take pain to mention in his pleading that in which area, in which survey number, in which village or city and in which and in periphery of city or village, the property is situated. Even because of it, it became difficult to consider as to whether really the property is situated within the jurisdiction of this Court. In short, the description of the property is not enough to identify the same.

According to the plaintiff, the suit property is purchased by one Shubhakaran Varma but even here also the plaintiff failed to give detailed particulars of the property nor the details of transaction in view of which, he seeks impleadment of party. In such a vague background and in absence of specific mentioning of the property, interest of the proposed party with the suit property can not be ascertained properly.

Though, no doubt it is a position of the law that the plaintiff is a *dominus litis* then also, no party can be put at sufferance at the whims of the plaintiff. Needless to mention that the application is devoid of merits and liable to be rejected. With this, following order is passed.

By this application, the plaintiff prayed sought setting aside of deemed abatement order supposedly passed on account of death of defendant No. 6 and because of non bringing his L.Rs. on record. In the application it is contended that, during pendency of the suit defendant No. 6 passed away, however, as the plaintiff was sick and further, she could not get information about L.Rs. of the deceased defendant No. 6, she could not file the application for bringing L.Rs. of defendant No. 6 on record within stipulated time. According to plaintiff, the delay caused therefor is not deliberate but because of the above said ground. According to her, considering nature of the suit permission is required to be given to the plaintiff to bring L.Rs. of deceased defendant No. 6 on record, otherwise, she will suffer a heavy and irreparable loss. Thus, prayed accordingly. The application is supported with affidavit of plaintiff.

2. The application is strongly apposed and contested by the defendant No. 1 by filing his say overleaf. The defendant No. 1 has contended that, there is abnormal and inordinate delay in filing this application and in bringing L.Rs. of deceased No. 6 on record the reasons mentioned in the application are not true and satisfactory and not supported with any document. Thus, he prayed to reject the application. Despite opportunity was granted, the remaining defendants failed to file their say to the application. Hence, hearing of the application proceeded in absence of their say.

3. Heard, Shri. R.P. Bandivdekar, the ld. Advocate for the plaintiff and Shri. V.B. Kadukar, the ld. Advocate for the defendant No. 1.

4. It is a matter of record that, defendant No. 6 died on 03/04/2017 and the plaintiff was required to bring L.Rs. of deceased defendant No. 6 on record within 90 days from the date of death of defendant No. 6 which comes to 01/07/2017. That, after expiry of the said period of 90 days, the plaintiff have got an opportunity to file an application for setting aside of deemed abatement order, within 60 days from the date of expiry of the above period of 90 days. As such, the application for setting aside of abatement order was to be filed on or before 30/08/2017. The application in hand is filed on 09/07/2018 which is belated. There is a delay of about one year in filing the said application. However, the loss caused to the defendants by filing the said application with delay can be compensated by awarding costs to the defendant No. 1. Considering the nature of the suit, presence of L.Rs. of deceased defendant No. 6 is essentially necessary. Thus, I am inclined to grant the application subject to costs. Hence, following order.

ORDER

The application below Exh. 123 is allowed in following terms.

After the plaintiff pays costs of Rs. 500/- to the defendant No. 1, deemed abatement order supposedly passed on account of death of defendant No. 6 shall stand set aside.

Payment of costs shall be condition precedent.

Parties to note.

Date : 15.10.2019.

(Amrit C. Birajdar)
Civil Judge, Jr.Dn., Chandgad.

CERTIFICATE

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	Shri. V.G. Kamble, L. G. Stenographer.
Name of Court	Shri. A. C. Birajdar, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	15/10/2019
order signed by the P. O. on	15/10/2019
order uploaded on	16/10/2019