

MHKO180004072012



R.C.S.No.199 /2012

Gurunath Vs Sanjay and others.

CNR NO.MHKO180004072012

**ORDER BELOW EXH.78.**  
**(Dated 03<sup>rd</sup> February 2023 )**

1] This application is filed by defendant No.1 and 2 u/s 151 of the Code of Civil Procedure. It is contended that, plaintiff and defendant No.1 are real brothers and the defendant No.2 is their mother. The defendant No.3 to 6 are not the family members of the plaintiff and the defendant No.1 and 2. The defendant No.2 is 72 years old lady and the plaintiff is trying to prolong this matter by filing various application. The names of the defendant No.3 to 6 are mentioned in the property card of the suit property. But they are not concern with the suit property. As per sale deed No.973 dated 04/05/1988 Moreshwar Phatak sold his 1/3 share in the C.T.S. No.51 to Mahadeo Akaram Patil. Therefore name of the Mahadeo Akaram Patil is added as a defendant No.6. Thereafter defendant No.6 sold his 1/3 share in the C.T.S. No.51 to Dattatray Santaram Lokhande vide sale deed No.5558 dated 19/11/1992. Therefore defendant No.5 and 6 are not concern with the suit property. The defendant No. 3 and 4 are also not concern with the suit property. They are mis-joinder of parties.

2] It is further contended that, the civil suit R.C.S. No.142/1983 was filed in between Suryakant Annapa Swami and predecessor of the plaintiff and defendant and Balkrushana Vasudeo Joshi in

respect of suit property No.2( C ). Said suit disposed off on 23/02/1998. As per said decree predecessor of the Swami and plaintiff are in cultivation. Present suit is filed for partition in respect of the share of plaintiff and the defendants. The defendant No.3 is not concern with the suit property. Hence they have requested to deleted the names of defendant No.3,4 and 6.

3] The plaintiff has filed his say at Exh.80 and strongly apposed this application. As per his contention false application is filed by the defendants. The plaintiff is the master of his suit and he is having right to filed suit and to made party to the suit as a defendants. The plaintiff and the defendants are the common owners of the suit property 1(C). All the defendants are the necessary parties to the present suit. The defendant No.3 to 6 are the common owners of the suit property therefore they are made as a defendants to the present suit. He had filed application to add party to the defendant No.3 to 6 and the same is allowed. But the defendant No.1 and 2 have not challenged said order. This court has already came to the conclusion that the defendant No.3 to 6 are the necessary parties to the present suit.

4] He has further contended that, The suit property mentioned in para No.1 ( C ) (3) is in common enjoyment of the plaintiff and the defendants. Therefore they are made necessary parties to the present suit. The parties in the civil suit R.C.S. No.142/1983 and in the present suit are different. This application is filed by the defendants with intention to prolong this matter. Hence he has requested to reject this application.

5] Heard both side. Perused record and proceeding.

6] Advocate for the defendant No.1 and 2 argued that, the defendant No.3 to 6 are neither the family members of plaintiff and the defendant No. 1 and 2 nor they are concern with the suit property. This suit is filed for partition and separate possession. Therefore they are mis-joinder of parties. Hence he has requested to deleted their name from the present suit.

7] On the other hand Advocate for the plaintiff argued that, the plaintiff is the master of his suit and he is having right to filed suit and to made party to the suit as a defendants. The plaintiff and the defendants are the common owners of the suit property 1( C ). All the defendants are the necessary parties to the present suit. The defendant No.3 to 6 are the common owners of the suit property therefore they are made as a defendants to the present suit. He has relied upon the following judgment of Hon'ble Apex court.

A) Hon'ble Punjab and haryana High Court in the case of Surinder Kumar and others V/s Jagdish and others, Civil Revision No.6760/2011 decided on 09/11/2011, in which it has been observed that, "since the plaintiff is dominus litus of a suit and can choose the defendant to contest his case. If the claim of Jagdish that he has a share in the suit property requires evidence to be decided, then Jagdish is not only a proper party but a necessary party to the suit. Moreover the defendants can not question the order passed by learned trial court allowing Jagdish respondent

No.1 to be impleaded as a defendant to the suit”.

B) Hon’ble Bombay High Court in the case of Saroj w/o Tulsi Sugandh and another V/s Harish S/o Ishawardas Amesar and another, 2017(2) Mh.L.J. 536, in which it has been observed that, “the provision of sub rule 2 of rule 10 of Order I of the Code of Civil Procedure can not be read to mean that, the court can strike out the name of defendant on the application filed by co-defendant. The plaintiff is the dominus litis and it is the right of the plaintiff to steer the proceeding as per his wish and desire and defendant can not dictate terms for proceeding with the civil suit”.

C) Hon’ble Bombay High Court in the case of ‘Adam A Sorathia and another V/s Municipal Corporation of Greater Bombay and another, 2001(3) Mh.L.J. 288, in which it has been observed that, the law relating to necessary and proper parties to the proceedings is no longer untouched. The law is settled by series of judgments of this court and of the Apex court that where the presence of respondent is necessary for complete and effectual adjudication of the dispute though no relief is claimed against him he is a proper party”.

8] On perusal of record it shows that, present suit is filed for partition and separate possession. As per order below Exh.27 defendant No.3 to 6 are added as a defendants. In the order below Exh.27 this court comes to the conclusion that the C.T.S. No.51 is the road and the names of the defendant No.3 to 6 are mentioned in the property card of C.T.S. No.47 and 51. Therefore they are

proper party to the present suit. As per said order defendant No.3 to 6 are added as a parties to the present suit. Now the defendant No.1 and 2 have filed this application and thereby requested to deleted their name as they are mis-joinder of parties. But when this court already comes to the conclusion that the defendant No.3 to 5 are the proper parties under such circumstances this court can not review its own order. I have gone through the case laws cited above, the ratio therein is made applicable to the present case. Hence I proceed to pass following order.

**ORDER**

- 1] The application is rejected.
- 2] No order as to cost.

Kurundwad.  
Date : 03/02/2023.

( S. S. Ingle )  
Civil Judge Jr. Dn., Kurundwad.