

ORDER BELOW EXH. 41.

01. Present application is filed by the third party applicant Mayur Shah under Order 1 Rule 10(2) of the CPC.

02. In short, it is the contention of the third party that the present suit is filed by the plaintiff against the defendant for perpetual injunction. In para No. 6 & 9 of the suit the plaintiff made contention against the third party and also admitted that one suit is pending between the present plaintiff and the third party therefore, it is necessary to add the third party as defendant No.2. Hence, prayed to allow the application.

03. The plaintiff opposed the application on the ground that the suit is for perpetual injunction. The plaintiff has challenged the notice issued by the Municipal Council and asked the injunction against Municipal Council. No satisfactory reason is mentioned in the application to add the third party as a defendant in the suit. The proposed defendant has admitted that suit property in that matter is in possession of present plaintiff. Hence, prayed to reject the application.

04. Heard the parties. Perused the pleadings of the parties. There is no dispute that the plaintiff has filed the suit for perpetual injunction and for declaration that the notice issued by the defendant is void. It is also not disputed that another suit is pending between the parties for recovery of possession claiming the encroachment at the hands of defendant. If this specific admitted facts are taken into consideration, then, the third party applicant is the necessary party to the suit, so that, the third party could put the defence about the suit property. Unless the third party is added in the suit, dispute between the parties cannot be effectively decided.

05. Further, necessary party means, the party in whose absence the matter cannot be decided effectively. As per the provision of Order 1 Rule 10(2) of the CPC, the Court is having jurisdiction to add or delete the parties. In absence of the present third party, the rights cannot be decided effectively. Therefore, the application deserves to be allowed. Hence, I pass following order,

ORDER

1. Application is allowed.
2. Third party is added as defendant No. 2 in the suit.
3. Plaintiff shall amend the plaint accordingly and file the amended plaint for the Court and for the defendants.
4. Concern Clerk shall take the entry of amendment in suit register and C.I.S.

Sd/-
(R.P. Kulkarni)
Civil Judge Senior Division,
Nilanga.

Date : 26.02.2019.