

MHNG080006022025



**Common Order Below Exh. 10 and 23**

Applicants through these two applications praying for addition of parties under Order I Rule 10 of Code of Civil Procedure.

2. According to applicants below Exh.10, they are legal heirs of Mahboob Diwan. He was retire teacher at Muncipal Corporation, Nagpur. After retirement he started business in real estate and purchased land at Yerkheda, Tal. Kamptee, Dist. Nagpur. Agricultural land at Yerkheda, P.H.No. 16, Tal. Kamptee, dist. Nagpur, land Survey No.184, 0.60 H.R. out of 1.42 is the suit property. Applicants took objection before Revenue Authority to mutated names as per sale deed dated 19.09.1994.

3. Defendant Babita Chavre executed forged sale deed in favor of Baba Diwan Land Developers and Builders vide Registration No. NGP/4493/1994-95 through its partner deceased Sheikh Mehboob Tukdyaji Diwan on 12/05/1995 and the Defendant purchased stamp duty on 09/05/1995 from vendor having Sr. No. 3205 Stamp Paper of Rs.500/-, Sr. No. 3206 Stamp Paper of Rs.500/-, Sr. No. 3207 Stamp Paper of Rs.500/- & Sr. No. 3208 Stamp Paper of Rs. 100/-. In Govt. mutation record in Tah. Kampti Entry No. 667 of 1994 & Order Dt. 16/09/1994 & however the Plaintiff filed the Registry Nagan No. 4828 of 12/05/1995. It is possible that deceased Sheikh Mehboob Tukdyaji Diwan mutated in name of mutation Panji as well as on Govt. record on 16/09/1994.

4. The Govt. Officers who has done blunder mistake to mutate the names of deceased Sheikh Mehboob Tukdyaji Diwan mutated in name of Ferfar Panji as well as on Govt. record on 16/09/1994. The Plaintiff filed

the registry Dt. 12/05/1995 is a totally illegal and bad in law because deceased Sheikh Mehboob Tukdyaji Sheikh Mehboob Diwan and thereby mutated names on 01.12.2022. Babita Sahdev Chaware also executed sale deed in favor of defendants. Finally prayed to allow the application.

5. Applicants below Exh.23 contended that, there was agreement to sale of land Mauza-Yerkheda, Khasre No.184, P.H. No.16, Tah. Kamptee, Dist. Nagpur, Plot Nos. 90 to 99 & 102 to 111 (25x40=1000 total 20 plots & total admeasuring area 20000 Sq.ft. (1858.08 Sq.Mtr.) in layout of Baba Diwan Gruhanirman Sahkari Sanstha Ltd, Nagpur for total consideration of Rs.62,00,000/-. Applicants paid Rs.25,00,000/- as per following dates and amounts. On 30.01.2024 by cash of Rs.10,00,000/-, 30.01.2024 By RTGS 34520008666 of Rs.4,50,000/-, 05.02.2024 by check No.000003 of Rs.3,50,000/-, 05.02.2024 by check No.982778 of Rs.7,00,000/- and 05.02.2024 by check No. of Rs.5,00,000/-, total amount paid of Rs.25,00,000/-.

6. The plaintiff opposed application of Exh.10 by filing say below Exh.22. According to the plaintiff, the secretary is duly authorized to represent cooperative society. Applicants had remedy by way of separate suit. Finally prayed to reject the application. The defendant opposed application of Exh.10 by filing his say below Exh.21. According to the defendant intervener has no rights over the suit property. Only the plaintiff and the defendant are real owners of the suit property. The suit property was not self acquired property of deceased Sheikh Mahboob Diwan. Finally prayed to reject the application.

7. The plaintiff opposed intervener application Exh.23 by filing say below Exh.32. According to the plaintiff application is filed based on false, fabricated and unregistered agreement which was executed for security purpose. Their was no intention to transfer property. Intervener are money

lander amount of Rs.7,00,000/- are fully repaid to Sharif Kadar Diwan acknowledged for cancellation of agreement. The plaintiff society already sold plots in the layout to its member in layout of Baba Diwan Gruha Nirman Sanstha. Finally prayed to reject the application.

8. Following point arose for my determination to which my findings with reasons there on are as under:-

| <b>Sr.No.</b> | <b>Points for determination</b>                                                                                  | <b>Findings</b>                               |
|---------------|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| 1             | Whether intervener/objection petitioners can be add as a party under Order I Rule 10 of Code of Civil Procedure? | Yes.                                          |
| 2             | What Order?                                                                                                      | Applications Below Exh.10 and 23 are allowed. |

**Reason As to point No.1 and 2:-**

9. Read applications, say. Heard Learned Advocate for respective parties and perused record.

10. Applicants below Exh.10 relied upon documents below list Exh.14 which contains 1.Mutation application filed by applicants before Tahsildar dated 01.09.2022, 2. 7/12 extract of mutated names dated 01.12.2022, 3. mutation panzi dated 17.01.2022, 4. sale deed copy Reg. No. 4828 of 12.05.1995 exacted by Babita Chaware to Baba Diwan Land Developers & Builders, 5. Sale deed copy executed by Baba Diwan Land Developers to Baba Diwan Gruhnirman H. Society(original plaintiff) dated 10.02.2022, 6. appeal filed original plaintiff against applicant before Sub Divisional Officer dated 22.02.2023, 7. order copy of SDO dated 24.11.2023, 8. application to talathi by applicant to stay mutation dated 14.12.2023, 9. death certificate of Mehboob dated 27.11.2007 and 10. death certificate of Roshan Diwan dated 25.04.2021.

11. Applicants below Exh.23 placed reliance upon document below

list Exh.27 which contains agreement to sale dated 30.01.2024 and payment receipts.

12. Sub clause 2 of Order I Rule 10 of Code of Civil Procedure reads as (2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. (4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant. (5) Subject to the provisions of the 323 Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

13. While Order I Rule 9 of Code of Civil Procedure deals with Misjoinder and non-joinder. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

14. The claim of applicants/intervener below Exh.10 is on the basis of being legal heirs of Sheikh Mahboob Diwan. While the claim of

intervener below Exh.23 is on the basis of agreement to sale executed by the plaintiff in their favour. There are two types of parties in a suit i.e. necessary parties and proper parties. Necessary parties are those in their absence no effective decree can be passed. While proper parties are those they are necessary for the adjudication so that suit can be heard and finally decided on its merits. In present matter the role of parties mentioned in application below Exh.10 and 23 are necessary so that effective decree can be passed and final adjudication can be had. Considering all this aspects of the matter my findings to point No.1 in the affirmative and in answer to point No.2 I pass following order.

**Order**

1. Applications below Exh.10 and 23 are allowed.
2. The plaintiff is directed to add applicants/intervener as party defendants and amend the plaint accordingly.
3. Costs in cause.

Place : Kamptee.  
Dt:- 19/07/2025

sd/-  
(Q.R. Syed)  
2<sup>nd</sup> Jt. Civil Judge Junior Division  
Kamptee.

## CERTIFICATE

**Name of Steno** :- Vrushabh Wanjari