

Spl. Civil Suit No. 38/2021
Shilabai Vs. Nitin + 1

ORDER BELOW EXH. 19

(Passed on this 22nd of September 2025)

Read the application, say and record. Heard Ld. Advocate Shri Sarwe for applicant and Shri. V.N. Patil for plaintiff.

2] Applicant Smt. Sushilabai Pyarelal Yadav has filed this application as an intervener requesting to implead her as party defendant on the ground that plaintiff Smt. Shilabai has executed agreement of sell in the year 2005 in her favour about the suit land. This is the main ground raised in this application. Ld. Adv. Shri Sarwe has also made such submission in his oral argument .

3] Plaintiff has opposed this application by filing say Exh. 21. She contends that intervener filed RCS No. 70/2009 against her claiming permanent injunction. However intervener withdrew that suit on 31-07-2010 with liberty to file fresh suit to challenge the sale-deed allegedly executed by plaintiff through her power of attorney in favour of defendant No. 2 Satish. But, intervener did not file such suit. On the other hand, intervener filed Special Civil Suit No. 174/2017 against her seeking specific performance of contract. It was decreed in the absence of plaintiff. Therefore, after receiving notice of darkhast, she filed appeal against such decree. However, as per the judgment and order dated 21-06-2021 in Regular Civil Appeal No. 449 /2019, above decree has been set aside and the suit is pending in this court. Therefore, application be rejected.

4] Ld. Adv. for applicant has relied upon following rulings in support of his submissions.

1] Amitkumar Shaw Vs. Farida Khatoon 2005(3) Mh.L.J. 330.

2] Natasha Singh Vs. Michael Tony Ferns 2018 (4) Mh.L.J. 596.

Perusal of these two rulings show that power of court to add a party to a proceeding does not depend solely on the question whether such person has interest in the property. The main point to be considered is whether presence of

such person is necessary to enable the court to decide the matter completely and effectively.

5] Ld. Adv. for plaintiff has also relied upon following two rulings to support his submission.

1] **Amitkumar Shaw Vs. Farida Khatoon 2005(3) Mh.L.J. 330.**

2] **Daitari Naik Vs. Umakanta Nayak AIR 1971 Orissa 44.**

Observations in these two rulings are similar as I have mentioned in above paragraph.

6] Question is whether intervener needs to be added as party defendant in this suit ?

7] Plaintiff shows that land bearing Gat No. 35/1-A admeasuring 5.75 HR of village Barvha, Tah. Umred is the suit property. Plaintiff Shilabai claims herself as owner of it. She has challenged the sale-deed dated 24-12-2009 executed by defendant No. 1 as her power of attorney in favour of defendant No. 2. It is prayed to declare such sale-deed as illegal. Injunction is also claimed to protect her possession.

8] The intervener submits that plaintiff Shilabai has executed agreement of sell in the year 2005 about the suit property in her favour. Therefore, she has filed Special Civil Suit No. 174/2017 against Shilabai for specific performance of contract. It appears from record that it was decreed on 21-04-2018 and on its basis intervener filed Spl. Darkhast No. 3/2018. However, thereafter present plaintiff filed RCA NO. 449/2019. against that decree. The Hon'ble District Court, Nagpur by the order dated 21-06-2021 in that appeal, has set aside such decree. Thus, Spl. Civil Suit No. 174/2017 is pending in this court. It is on today's board. Intervener is the plaintiff in it. She has challenged subsequent sale-deeds in that suit.

9] Intervener's claim revolves around the alleged agreement of sell executed by plaintiff in her favour. However, her such claim is the subject matter of Spl. Civil Suit No. 174/2017. Her such claim will be dealt with in that suit. Her presence is not necessary in the present suit since the dispute is with reference to sale deed allegedly executed by plaintiff in favour of defendant No. 2. Decision of

this suit is not going to affect the intervener. Therefore, her presence in the suit for its effective decision is not necessary. Thus, for the above reasons I hold that intervener is not the necessary party in this suit. Therefore, her request to implead herself as party defendant is liable to be rejected. Thus, I pass following order.

ORDER

Application is rejected.

Umred.
Dated: 22/09/2025.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

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

Name of Stenographer : Mrs. D.T. Vighne
Stenographer (Grade II)