

R.C.S. 70/2016
Shradha -vrs- Dilip
Exh.

ORDER BELOW EXH.39
(dt.8th December, 2017)

This an application filed by third party for impleading them as party defendants to the present Suit. The say of parties was called for plaintiff and defendant No.2 to 5 filed the say and have opposed the application.

Heard learned Adv. Joshi for third party. He rely upon decision of Hon'ble Supreme Court in case of Ajhar Sultana -vrs- B. Rajamani (2009) Supreme Court Cases 27 and in Vidur Impex and Traders Private Limited -vrs- Tosh Apartments Pvt. Ltd. and others (2012) Supreme Court Cases 384. Also heard Adv. Mandavkar for defendant No.2, Adv. Likhite for plaintiff and Adv. Pongade for defendant No.5. Considering the nature of controversy points arise for consideration are as under :-

POINTS

FINDINGS

- | | |
|--|-------------------------|
| 1] Whether third party and applicants are proper and necessary parties to the present Suit ? | No |
| 2] Whether application is legal and proper ? | No |
| 3] What Order ? | Application is rejected |

REASONS

Perused the pleading and Provisions of Law. This is a Suit for Declaration, Partition and Separate Possession of agricultural lands. It is the case of third party applicants that the suit properties bearing Bhumapan No.271 and 277 were joint properties of defendants. Defendant No.1 to 3 have relinquished their rights in favour of defendant No.2. Defendant No.2 is the only owner. The third party applicants have executed registered Agreement to sell on 19.3.2016 in respect of Suit properties with defendant No.2. They have invested

huge money into the properties and have paid Rs.2,00,000/- at the time of Agreement. It is, therefore, prayed that they be impleaded as defendants.

Learned Adv. Joshi would submits that if the suit is decreed, the suit properties may get partitioned. The third party applicants would be at loss as they have a right to purchase.

It appears that defendant No.2 has filed the Written Statement and his contesting the suit claim. As on today the third party applicants have mere right to purchase properties from defendant No.2. They do not have any existing right of any nature into the property. Their remedy is by way of suit for specific performance against defendant No.2. If third party is not made a party to the present suit, there can not be no hurdle in deciding the controversy. On the other hand, if they are joined as parties there would be unnecessary issues as between third party applicant and defendant No.2 only. They, therefore, do not appear to be necessary party nor a proper party to the suit for partition.

In both the cases, before Hon'ble Apex Court (**cited Supra**) on which reliance is placed by Learned Adv. Joshi, the suit was filed for specific performance of contract, the application was to implead subsequent purchaser of the property as party to the suit. The Hon'ble Apex Court, was therefore, pleased to allow the joinder of transferee pendent lite. However, the present suit is for partition, there is no concluded transfer in favour of third party applicants. Therefore, the ratio laid down by the Hon'ble Apex Court do not apply to the facts and circumstances of the present case. The application is not legal and proper and is liable to be rejected.

ORDER

Application is rejected.

Umrer,
Date: 08.12.2017

(S.V. Deshmukh)
Civil Judge (Jr.Dn.),
Umrer.