


MHNG180002462013 	<u>ORDER BELOW EXH. 159</u> <u>Tanba & Ors. Vs. Shobhabai & Ors.</u> (Passed on this 01st September, 2022)
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1. This is third party application seeking addition of third party in the suit as defendant. It is stated that, the applicant has right and interest in one of the suit property. The Court has delivered judgment holding him its owner and possessor by dismissing another suit of present plaintiffs against him. Judgment has not been reversed. It is binding on the plaintiffs and he has suppressed this fact in this suit. The suit can not be effectively tried and adjudicated upon without joining the applicant as party. He has been falsely kept out of the suit by the plaintiffs. He prayed that he may be impleaded as defendant.

2. The plaintiffs have filed say at Exh. 161 stating that the applicant is not necessary party to the suit. Application is filed in order to delay proceeding at instance of defendant No.1. Right of the applicant is not going to be decided in this suit. The plaintiffs are master of the suit. Decision in the suit does not bind the person not party to the suit. They prayed that the application may be rejected.

3. Heard Ld. Advocates for the parties. They have submitted in terms of contents of application and say. Ld. Adv. V.D. Muley relied on ratio of Hon'ble Apex Court in [(2020) 13 Supreme Court Cases 773] **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Others.**

4. Perusal of the plaint shows that, this is a suit for declaration of ownership of the plaintiff over the suit property and injunction restraining the defendants from interfering with possession of the plaintiffs over the suit property. It appears from documents on record that, one of the suit property was subject matter of suit R.C.S. No. 27/2009. The plaintiffs or persons through whom the plaintiffs are claiming rights in this suit were parties to that suit as plaintiffs. The applicant was defendant and the suit was dismissed.

5. Present suit is for declaration of ownership. It can be brought against the person or persons denying or interested to deny title of the plaintiff. In the present case the applicant is denying title of the plaintiff over specific property and coming with decree of the court which admittedly is not reversed. In such situation, it appears that the applicant is a person who ought to have been joined as a party and in whose absence no effective decree could be passed in respect of the specific suit property. Therefore, I am of the opinion that the applicant is necessary party to the suit.

6. No doubt the plaintiff is dominus litus of the suit and appeal against previous suit is pending. Rule 10 (2) of Order I of The Civil Procedure Code 1908 provides that, the Court may at any stage of the suit or proceeding, wither upon or without application of the party can add a person as party who ought to have 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 questions involved in the suit be added. The applicant appears necessary party to the suit. Issue involved before

Hon'ble Apex Court in [(2020) 13 Supreme Court Cases 773] **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Others** was regarding parties to suit arose out of contractual relations. Facts of the case in hand and case before the Hon'ble Apex Court are not same, simillar or even identical. Therefore, I most humbly and respectfully submit that ratio laid down by Hon'ble Court is not applicable to case in hand. For the reasons mentioned, I do not accept submissions on behalf of the plaintiffs and proceed to pass order.

ORDER

1. The application is allowed.
2. The applicant is added as defendant in the suit.
3. The plaintiff is directed to carry out amendment and file amended plaint within next two dates.
4. The newly added party is directed to file written statement within next two dates and upon failure to file the same, the suit will proceed without his written statement.

Date: 01/09/2022
Kalmeshwar.

(Y.S. Kawade)
Jt. Civil Judge Jr. Dn.,
Kalmeshwar, Nagpur.