

**ORDER BELOW EXH.19**

The present application is filed by one Deepak Champalal Shrishrimal as a third person for addition of him as party defendant in the present suit as per Order I Rule 10(2) of the Code of Civil Procedure, 1908.

02 Deepak Champalal Shrishrimal i.e., proposed defendant is averred through present application that he is adjacent owner of property bearing Block no 478-B/3 which was purchased by him from the plaintiff. The present suit was filed by the plaintiff against defendant for declaration and perpetual injunction on the basis of repeated alleged illegal complaints filed by said proposed defendant in the Ghoti Grampanchayat. As the main cause of action for suit arising out of alleged illegal notices sent to the plaintiff by relying upon repeated complaints from proposed defendant, the said proposed defendant is a necessary party to the present suit and hence, he filed present application for addition of him as party defendant in the present suit.

03 The plaintiff has filed his say to the present application at Exh 22 and contended that the proposed defendant is not at all concerned with the cause of action of present suit. He further averred that the proposed defendant has no *locus standi* in the present suit as it is for declaration to the effect that alleged notices sent by the defendant are not binding on plaintiff and there is no infringement of right of proposed defendant. Hence, he prayed for rejection of present

application.

04 In order to decide the issue of addition of proposed defendant in the present application, it is necessary to analyze related legal provisions. Rule 10(2) of the Order I provides that *“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 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.”* On the point of impleadment of party in the suit, the Hon’ble Apex Court in case of **Razia Begum v. Sahebzadi Anwar Begum and others; AIR 1958 SC 886**, held that *“in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation.”* The Hon’ble Bombay High Court, relied upon above noted ruling, held in case of **Devchand Constructions v. Board of Trustees of the Port of Mormugao and anr.; 2006 (5) Mh L J 644** that *“the reading of sub-rule (2) of Rule 10 of Order 1, the object behind it is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases: (1) when he ought to have been joined as plaintiff or defendant, and is not joined so, or (2) when, without his presence, the questions in the suit cannot be completely decided. Sub-rule (2) or Rule 10 of Order 1 of Civil Procedure Code enables the*

Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code.”

05 In the backdrop of above legal position and settled principles of law, factual matrix of the present application and main suit is required to be analyzed thoroughly. The present suit is filed for declaration and perpetual injunction against defendants which are concerned officers of Ghoti Grampanchayat and subject matter of said suit is two storied house property including ground floor in Survey No 478/B2 admeasuring 220 sq.mt. situated at Mouje Ghoti, Taluka Igatpuri, District Nashik which is termed as ‘suit property’ for sake of convenience. The cause of action arose for filing of said suit is repeated notices sent by the defendants and recent notice dated 02/12/2022 was sent for illegal destruction of suit property of plaintiff. The proposed defendant comes into picture in the averments of plaint when the plaintiff submitted that adjacent owner i.e., proposed defendant filed his illegal complaints to defendant i.e., Ghoti Grampanchayat regarding illegal construction and encroachment of plaintiff over suit property. The plaintiff, in his plaint itself, averred that several complaints are made by the proposed defendant regarding encroachment and illegal construction over suit property to the present defendant i.e., Ghoti Grampanchayat and in pursuance of said complaints, the defendant issued notices to the plaintiff for filing his say to said complaints and for removal of alleged illegal construction and encroachment.

06 The fact of illegal construction or encroachment is required to be proved by evidence on record and though said fact is not averred by plaintiff specifically, it is impliedly included in the cause of action of present suit. The subject matter in dispute cannot be effectively decided without addition of proposed defendant. The proposed defendant placed reliance on concept of 'pro forma' defendant which is enumerated in the ruling of Hon'ble Punjab and Haryana High Court in case of ***Gita Ram Kalsi Vs. S. Pritvi Singh & ors. ; AIR 1956 Punjab 129*** in which it was held that "*A pro forma defendant is joined as a party in a suit because his presence is necessary in order to enable the Court spectrally and completely to adjudicate upon the matters in controversy between the parties. He does not enjoy any special rights or privilege which are not available to others and is as bound by the decision of the Court as the other parties to the litigation. If therefore any such person had a right to be heard or to control the proceeding, he is bound by the doctrine of 'res judicata' even though he was joined merely as a formal party.*" While giving reply to the above ruling of proposed defendant, the Ld. Advocate for the plaintiff submitted that aforesaid case is not applicable to the facts and circumstances of present case as the important question dealt with in the aforesaid case is that whether a person who is merely formal party to an action and against whom no relief is claimed is bound by or entitled to the benefits of the rules of *res judicata*. After perusal of said ruling and facts of present case, aforesaid ruling is not considered while dealing with present application due to factual differences.

07 In the backdrop of above discussion, it appears that the proposed defendant is a necessary party to the present suit as main cause of action for present suit is derived from repeated complaints by

said proposed defendant to the present defendant i.e. Ghoti Grampanchayat. The effective adjudication of the subject matter of the suit will be possible only by adding said proposed defendant in the suit as he is concerned with actual fact in dispute. Hence, the proposed defendant is required to be added as party defendant in the suit as necessary party. Accordingly, following order will suffice the purpose :

ORDER

- 1) Application at Exh.19 is allowed.
- 2) The proposed defendant named Deepak Champalal Shrishrimal be added as party defendant in the present suit.
- 3) The plaintiff is directed to carry out necessary amendment to that effect on or before next date.

Date: 21/03/2023

(S.G. Kuvalekar)
Jt. Civil Judge, Jr. Division
Igatpuri.