

ORDER BELOW EXHIBIT 15

This is an application filed by third party to the suit seeking them to be added as defendant Nos.2 & 3 in the present suit vide Order I Rule 10 of the Civil Procedure Code.

02. It is the contentions of the present applicants that, plaintiffs have filed suit for seeking perpetual injunction against defendant restraining him from obstructing the peaceful possession of plaintiff over suit land. The plaintiff has wrongly mentioned the boundaries of suit land. It is the case of the applicants that, they were members of joint Hindu family and suit land came into share of present applicants in oral partition. The grand father of applicant No.2 namely Manik Murlidhar Ware had given the suit land to applicants in partition. That time, applicant No.2 was minor and therefore, on behalf of or for applicant no.2, applicant No.1 is cultivating the suit land till applicant No.2 attains majority.

03. It is further contended by present applicant that, plaintiff had sold out land adm.17R to Surekha Jagannath Shirke illegally. In fact the grand father of applicant no.2 had given the land in 420 to applicants in partition. The suit land and 16R land is owned by present applicants. The grand father of the present applicant had habit of drinking liquor and in the state of drunk, plaintiff got the sale deed executed from grand father of applicants. However, the suit land was and in possession of present applicants.

04. The suit land was ancestral land of present applicants. Grand father of applicant No.2 was not the only owner of land adm.74R in block No.420. Therefore, he has not right to execute the sale deed in favour of plaintiff and hence, the sale deed No.1418/1998 executed by grand father of applicant no.2 is not binding upon the other heirs.

05. After purchasing the suit land, plaintiff came to take the possession of suit land and that time he told to present applicant that he had purchased the suit land and filed the civil court in Court in respect of suit land. When applicants inquired, they came to know about the execution of sale deed No.1418/1998 and therefore, the moved the resent application. According to them, they are necessary

parties to the suit and must be added as defendants in the present suit. Moreover, without adding them in suit, necessary order cant be passed hence, they prayed to allow the application by adding them as defendant No.2 & 3 in present suit and sought direction to the plaintiff to amend the plaint by adding them as defendants in present suit.

06. The Plaintiff filed his say on back leaf of the application and strongly resisted the present application on the ground that, in the year 1998 he had purchased the suit land vide sale deed No.1418/1998 and on the basis of said sale deed, plaintiff is owner and possessor of suit land. Till toady the sale deed and mutation entry in the name of plaintiff have not been challenged. To creat the complication in present suit, present application is moved.

07. It is submitted by plaintiff that according to theory of present applicant, they got the suit land in the year 1996 from grand father of applicant No.2 in partition, however, apart from the suit land which other land had came into share of the applicants, are not mentioned in the present application. Moreover, other then them, to whom and how much land had been given in partition is also not specified in application. It is further submitted by plaintiff that, he had sold out some land to Surekha Shirke and her name is also mutated on 7/12 extract. However applicants have not stated anything about it. The father of the applicant is alive. He or other legal heirs have not come before the Court except these applicants which is surprisingly. Thus, Plaintiffs prayed to reject the applicant.

08. Perused the record. Heard the arguments advanced by advocate of the applicants and plaintiff. Following points arise for my determination and my findings thereon and reasons thereof are as follows:

	Points	Findings
1.	Whether applicants satisfy that they are necessary parties in the present suit?	NO
2.	What order?	The application is rejected.

REASONS

AS TO POINT NO. 1:-

09. It is necessary to note that even in absence of any contest the application would still have to undergo the test as per Order I Rule 10 of the Code of Civil Procedure, 1908. In order to add present applicants as defendants, they will have to satisfy this Court that their addition is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the present suit.

10. In **Bhogadi Kannababu Vs. Vuggina Pydamma 2006(3) M.L.J 105**, the Supreme Court had held that, "In an application for impleadment under Order I Rule 10 of CPC, the Court would only decide whether the presence of the applicant would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. But the question of the strict proof whether the applicants were also entitled to the right involved in the proceedings, may not be germane for decision."

11. In **Amit Kumar Shah Bs. Farida Khatton 2005 (4) CTC 47**, it had been held that the object of Order 1 Rule 10 of the CPC, 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 the above Rule, a person may be added as a party to suit only 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. The power of the Court to add a party to the proceedings can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

12. Necessary party is one without whom no order can be made effectually and proper party is one whose presence is necessary for the complete and final decision on the issue involved in the

proceedings. Therefore, the addition of parties would depend upon the judicial discretion which has to be exercised, according to facts and circumstances of each case. The person to be joined must be one whose presence is necessary as party to the suit. What makes a person a necessary party is not merely that he is a share holder in the survey number involved in the suit.

13. It is well settled that the plaintiff in a suit is the “dominus litus” who could choose the parties to the suit. It is also clear that a necessary party is one without whom no effective order can be passed and proper party is one whose presence is necessary for a complete and final decision of the Court. In a suit of bare injunction, plaintiff is at liberty to make party to the suit of his own choice. It is the will and wish of the plaintiff to seek relief of injunction against a person of his choice.

14. Perused the plaint. The present suit is filed seeking decree of bare injunction restraining the defendant or any person claiming through them from obstructing peaceful possession and ownership of the plaintiff in respect of the land admeasuring 47R in block No.420 situated at village Chincholi, Tq. Bhoom & Dist. Osmanabad and any other relief.

15. On perusal of the record available, and in view of the decision cited above, this Court came to the conclusion that, present applicants have not shown sufficient cause or reason to add them in a suit for bare injunction as defendants. The present applicants have failed to show that they are proper or necessary party to the suit, as claimed by them. As the suit filed by plaintiff is only for a bare injunction and too against the present defendant only therefore, present applicants neither proper nor necessary party for an effective adjudication of the issues arising for its consideration. Present applicants claim to be the owner and possessor of suit land. They may prefer an independent suit for their claim. Being the suit seeking bare injunction, present applicants are not the necessary parties and cannot be added in suit. Hence, point No. 1 is answered in negative and in answer to the point No. 2, I proceed to pass the following order:

ORDER

The application at **exhibit 15** is rejected.

Date: 06.03.2023

(Husna R. Khan)
I/c Jt. Civil Judge, J.D.,
Bhoom.

Certificate

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

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Court	...	2 nd Jt.CJJD & JMFC Bhoom
Date	...	06-03-2023
Order signed by the Presiding Officer on	...	06-03-2023
Order uploaded on	...	17-03-2023