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**: ORDER BELOW EXH. 24
IN Civil Appeal No.420/2012 :**

1] The present application is moved by third party / intervenor Vijay Shivram Pathare under Order 1 Rule 10 of Code of Civil Procedure, claiming his right, title and share in the suit property, which was bequeathed in his favour by one Anjanabai Dhamdhere. Late Anjanabai is his maternal aunt. On the basis of the WILL executed by late Anjanabai Dhamdhere dt. 17/02/2005, who died on 04/03/2005, intervenor prayed to add him as a party.

2] It is further contended that in view of the WILL executed by late Anjanabai Dhamdhere dt. 17/02/2005 & on the basis of said WILL, he acquired the right, title and interest in the suit property. Therefore, respondent No.1 Deepak Shivram Pathare had no authority to entered into transaction with respondent No.2 – City Corporation Ltd. Therefore, the document executed in between them is totally illegal not binding upon the rights of the third party intervenor. Therefore, he is necessary party. Hence, prayed to allow the application. The application is supported by an affidavit at Exh.25.

3] Vide handwritten reply below Exh. 24, respondent No.1 prayed to pass necessary orders.

4] Vide reply at Exh.30, appellants objected the application being false, frivolous and without having any basis.

: 2 :

It is categorically denied that late Anjanabai executed testament / WILL dt. 17/02/005 as alleged by the third party intervenor. Hence, he is not necessary party. Hence, prayed to reject the application.

5] Vide reply at Exh.31, the respondent 2 City Corporation strongly resisted the present application on the ground that there is no legal and valid reason to move the intervenor's application. It is contended that a registered WILL dt. 22/12/2004 was executed by late Anjanabai Dhamdhere in favour of respondent No.1 Deepak Shivram Pathare. Accordingly, his name was duly mutated in Revenue Record. Subsequently, suit property was sold to this respondent No.2 City Corporation legally and validly. Thus, third party intervenor has no right, title and interest in the suit property. Therefore, being the rights are claimed on forged and fabricated WILL. Therefore, the suit bearing No. 1275/2017 was instituted before the Civil Judge, Sr.Dn, Pune. Said court granted temporary prohibitory injunction against the intervenor / third party. Therefore, being aggrieved & dissatisfied by the said order, a Misc. Civil Application No. 123/2018 was preferred which is pending in this court. Therefore, prayed to dismiss the application being the intervenor has no locus standi to intervene the matter.

6] The following points arise for my determination, which I have noted my findings thereon with a reasons thereto, as under.

POINTS

FINDINGS

1]	Whether intervenor / third party is necessary party ?	.. In the negative.
2]	What order?	Application is rejected.

: REASONS :

7] After having heard the learned Advocates of the parties, from the intervenor's application, it emerges that one late Anjanabai Dhamdhere executed a WILL dt. 17/02/2005 in respect of the suit property bestowing him right, title and interest. Therefore, it is the stand of the intervenor that respondent No.1 Deepak Pathare had no authority to enter into a transaction with the respondent No.2 City Corporation. Thus, said transaction is illegal. Therefore, on the basis of the WILL, dt. 17/02/2005, he being having right, title and interest. Therefore, prayed to add him to suit under Order 1 Rule 10 of Code of Civil Procedure being necessary party.

8] The stand of the respondent No.1 Deepak Pathre as per his written reply that the court may pass the necessary order thereby meaning to say that he do not want to comment.

9] So far as the stand of the appellant is concern, they took stand that no WILL dt.17/02/2005 was ever executed by their maternal aunt Anjanabai Dhamdhere in favour of third party intervenor. Thus, intervenor had no right, title, interest and locus standi to intervene the matter being he is not at all necessary party. Hence, prayed to reject the application.

10] So far as the stand of City Corporation is concern, Corporation had come up with categorical stand that late Anjanabai Dhamdhere executed a registered WILL in favour of respondent No.1 dt. 22/12/2004 disposing of her entire estate in favour of respondent No.1 Deepak Pathare. On the basis of said registered WILL, accordingly,

: 4 :

necessary mutation entires were taken. Thereafter, the suit property was transferred legally & validly in favour of the City Corporation.

11] Further, learned Advocate Shir V.V. Mane on behalf of the City Corporation further vehemently pointed out that RCS No. 1275/2017 was instituted by the City Corporation before the Civil Judge, Jr. Dn., Pune, for declaration and injunction. The declaration was sought that the WILL dt. 17/02/2005 is forged & fabricated. Therefore, in respect of the suit property sought injunction against the intervenor third party, who is the real brother of the respondent No.1 Deepak Pathare. In the said Civil Suit, the learned Trial Court granted injunction. The appeal was preferred against that order by the intervenor third party which is also pending in this court bearing Misc. Civil No. 123/2018. It is also fixed today at Sr. No.31. Hence, prayed to reject the application being intervenor third party had no concern whatsoever in respect of the suit property.

12] After considering the rival submissions & stand taken by the rival parties, it appears that being the registered WILL was executed by late Anjanabai in favour of respondent No.1, on the basis of said registered WILL, respondent No.1 became legally entitled to succeed the estate of late Anjanabai. Anjanabai was stated to be the maternal aunt of the respondent No.1 and intervenor as well of the appellants. To the present dispute, third party intervenor have no concern, at this juncture, unless & untill his right on the basis of the WILL dt. 17/02/2005 is established & if he succeed in getting the probate in respect of the said WILL. Therefore, at the most, it can be said that he may a proper party but not at all a necessary party.

: 5 :

13] Further, even in his absence, a decree sought by the appellants can be executed considering the facts and circumstances of the case and the stand taken.

14] Hence, I do not found in the merits in th application, as learned Advocate has rightly pointed out that the Miss. Appeal against order passed below Exh.5 in Reg. Civil Suit No.1275/2017 is preferred and pending today at Sr. No.31.

15] Therefore, I proceed to pass following order :

: ORDER :

The application is rejected with cost

Pune.
Date: 09/12/2019

(S. P. PINGLE.)
District Judge-20
Pune.

: 6 :

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of the Steno : V.A. Endgallu. (Grade-1)

Name of the Court : S.P.PINGLE.

District Judge-20, Pune.

Date : 09/12/2019.

Judgment signed by Presiding Officer on : 10/12/2019.

Judgment uploaded on : 10/12/2019.