

ORDER BELOW Exh.20
(Passed on dated:-09/10/2020)

1. This is an application filed by defendant no.2 under Order 1 Rule 13 of Civil Procedure Code.
2. Defendant no.2 has contended that he has husband of defendant no.3 and the suit property is self acquired property of defendant no.3. Suit property is constructed by defendant no.3 in her own income. Therefore he has no concern with the suit property and construction there upon. He has misjoinder of party to the suit. Hence he prayed for strike out his name.
3. The plaintiff has filed his say at Exh.25 and strongly objected the application contending that the defendant no.2 issued notice to him through his advocate and wherein he contends that suit property belongs to him and they have going to constructing over the suit property. Therefore defendant no.2 is the necessary party to the suit.
4. Before moving ahead to the merits of the application it is necessary to see the provision of rule 3 of Order 1 of C.P.C. Who may be joined as defendants wherein the conditions required to be satisfied in the case of defendants are that the right to relief alleged to exist against them arises out of the same act of transaction, and the case is of such a character that, if separate suits were brought against such

person, any common question of law or fact would arise.

5. Plaintiff has filed this suit for declaration and perpetual injunction. The relief claimed by the plaintiff that the notice dated 14.12.2016 issued by defendant no.1 to defendant no.2 and 3 are legal and defendant no.2 and 3 are permanently restrained from unauthorised constructing over the suit property. After considering the notice dated 14.12.2016 issued by defendant no.1 it appears that said notice is addressed or issued to the defendant no.3 only and not to the defendant no.2. Moreover after perusal of 7/12 extract and property tax receipt of suit property it appears that name of defendant no.3 appears in ownership possession column. Thus from this document it reveals that defendant no.3 is the owner of suit property and as per the notice she had constructing over the suit property. Therefore defendant no.3 is the necessary party to the suit.

6. After considering the above discussion it appears that right to relief alleged to exist against defendant no.2 does not arise out of the same act or transaction and if separate suit was brought against him, no common question of fact or law would have arises as there is misjoinder of defendant no.2. Thus as per the Order 1 Rule 10 of C.P.C. where there is misjoinder of parties, the name of plaintiff or the defendant who has been improperly joined may be struck out and the case may be proceed with. Hence with this observation I pass the following order.

ORDER BELOW Exh.20
CNR No. MHPU10-000252-2018

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R.C.S. No. 35/2018
Nitin Chaganlal Jain

-Vs.-

Pimpri Chinchwad Municipal Corporation and others

ORDER

1. The application is allowed.
2. The plaintiff is directed to struck out defendant no.2 Shri. Lahuraj Ramchandra Shinde as party to the suit vide Order 1 Rule 10(2) of the Code of Civil Procedure.

Dated: 09/10/2020.

(V. R. Mane)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

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CERTIFICATE

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order”.

Name of Stenographer :- Smt. S. S. Gupte

Court Name :- Smt. V. R. Mane
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),
Akurdi, Pune.

Date :- 09/10/2020

Order signed by
presiding officer on :- 09/10/2020

Order uploaded on :- 12/10/2020