

ORDER BELOW Exh.21
(Passed on dated:-09/10/2020)

1. This is an application filed by defendant no.3 under Order 1 Rule 10 of Civil Procedure Code.

2. Defendant no.3 has contended that plaintiff filed this suit and taking objection in respect of construction over the suit property. She further contends that in reality this plaintiff has not any property adjacent to the suit property. Plaintiff has not locus standi, even he has not filed this suit under the capacity of power of attorney holder. Thus the name of the plaintiff has strike out as the suit has been instituted on the name of wrong plaintiff.

3. The plaintiff has filed his say at Exh.26 and strongly objected the application contending that defendant no.2 and 3 had unauthorisedly constructed over the suit property, so for demolishing the suit property he has filed this suit for declaration and perpetual injunction. He has not filed the suit for declaration of ownership of suit property. He further contends that defendant filed this application only for delay the proceeding of the suit. Hence he prayed for reject the application.

4. Before moving ahead to the merits of the application Let me reproduce Order 1 Rule 10 of the Code of Civil Procedure,

Order 1 Rule 10:-

Suit in name of wrong plaintiff-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties- 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 party improperly joined, whether as plaintiff or defendant, be struck out, and 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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant

and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [Indian Limitation Act, 1877 (of 1877), section 22], the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

5. Plaintiff has filed this suit for declaration and perpetual injunction. It is the contention of the plaintiff that property adjacent to the suit property is owned by his mother. That the defendant no.2 and 3 have unauthorisedly constructed over the suit property. Due to this unauthorised construction he has suffered electricity short circuit on his property. Defendant no.2 and 3 are not ready to perform electric work and they have taking objection for his electric work. Moreover these defendants have demolished the balcony (sajya) on the window of plaintiff's property. So he filed the present suit and seeking claim for demolishing the suit property.

6. After considering the plaint itself plaintiff himself submit that the property owned by his mother is adjacent to the suit property. Thus as per the plaint and 7/12 extract of the suit property it clears that plaintiff's mother Sushilabai Chaganlal Jain is having share in the S.No.102/1A/1 which is adjacent to the suit property. Eventhough, plaintiff's suit is not for declaration of ownership but then also under which capacity he has filed this suit this question remain unanswered. As per the plaint it appears plaintiff's mother is the owner of the

property which is adjacent to the suit property therefore she is the necessary party. Per contra, present plaintiff is neither necessary party to this suit nor he has any authority to continue as power of attorney holder of his mother. Therefore, as per Order 1 Rule 10 of C.P.C. that the name of the present plaintiff has been improperly joined may be struck out and the name of necessary party who ought to have been joined as plaintiff or whose presence before the court may be necessary in order to enable the court of effectually and completely to adjudicate upon and settled all the questions involved in the suit, be added. With this observation I pass following order.

ORDER

1. The application is allowed.
2. The name of plaintiff's mother be added as plaintiff as a party to the suit and name of the present plaintiff to strike out as party to the suit.

Dated: 09/10/2020.

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

ORDER BELOW Exh.21
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

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