

**ORDER BELOW EXH.51 IN R.C.S. NO. 75/2019**  
**(Sanjay Gole V/s. Laxman Gole)**

Present application filed by the applicant (third party) to implead him as party to the suit.

2. According to the applicant the suit is filed for partition, separate possession and other consequential reliefs. It is contention of the applicant that defendant No.1 and 3 executed agreement to sell dated 14/12/1018 in his favour in respect of one of the suit property Gat No.998 admeasuring 1H.80R. The said property is coming under command of area of Gunjawani Dam and therefore, prior permission is required for transfer. Therefore, defendants executed power of attorney in favour of the applicant for obtaining permission and doing consequential works. Accordingly, permission was obtained vide order of SDO dated 24/06/1019. But, on 29/06/2019 defendant No.3 was died. Thereafter, her legal heirs, defendant No.3A, 3B, defendants No.2 and 4 executed consent letter dated 18/08/2020 in his favour and thereby agreement to sell and power of attorney were confirmed. During this period sale permission given by SDO was lapsed and applicant got information about institution of present suit. It is stated that the applicant paid huge money to defendants. However, due to prohibitory order passed this court, it is not possible to transfer the said property to the applicant. The right and interest of the applicant is involved therefore, presence of the applicant is necessary in the suit. No prejudice will be caused to the parties, if he will implead as defendant in the suit. On the contrary irreparable loss will be caused to him. Hence, prayed to allow the application.

3. Defendants has not opposed this application in reply

stating that any just and appropriate order will be passed. Plaintiff filed his say and resisted the application. As per his averments, the defendants No.1 and 3 are having no right to execute agreement to sell and power of attorney without partition. Defendants No.1 and 3 executed only agreement to sale whereby the applicant is not obtained any title. Transfer is not completed hence, the applicant is not necessary party to the suit. In spite of prior knowledge about institution of suit, the applicant fraudulently obtained permission from SDO. Despite prohibitory orders of the court, the applicant by breaching this order to get executed consent letter from defendants No.2 to 4 in his favour. Therefore, application deserves to be rejected.

4. Perused application and say. Heard both parties at length. Perused record.

5. The suit is for partition, separate possession and permanent injunction. The application filed for impleadment as necessary party in the suit. In view of order 1, Rule 10 of the Code of Civil Procedure, necessary party is without whom no effective order can be passed by the court. On perusal of record it reveals that defendant No.1 and 3 executed registered agreement to sell and power of attorney dated 14/12/2018 in favour of the present applicant. Thereafter, after demise of defendant No.3, defendant No.2, 3A, 3B and 4 executed consent letter dated 18/08/2020 in favour of present applicant. It is argued by plaintiff that the contract between parties is not concluded, therefore, no right and interest is transferred to third person. No absolute right is handed over to applicant. Applicant is not family member, hence, he can not be proper or necessary party to the suit. On the other hand, applicant

argued that no harm will be caused to plaintiff, if he will implead in the suit. I am not agree with the submission of Ld. Advocate for plaintiff that the right and interest is not transferred vide agreement to sale. As per Sec.54 of the Transfer of Property Act agreement to sale also one of the mode of transfer. Though, no absolute right is transferred but interest is transferred in favour of the transferee. It prima facie shows that interest of present applicant is involved in present suit. As the suit is for partition, the applicant is necessary party for the suit in whose absence no effective decree can be passed. Moreover, no prejudice will be caused to plaintiff, if applicant impleaded as party to the suit. Main object of the provision of Code of Civil Procedure, is to avoid multiplicity of proceeding. Considering all aspects discussed aforesaid, I am inclined to pass following order;

### **ORDER**

1. The application is allowed.
2. Plaintiff is directed to implead present applicant in the array of defendant and submitted amended copy of the plaint.

Saswad  
Date : 15/12/2021

**Sd/-**  
**(Smt. D. M. Patil)**  
2<sup>nd</sup> Jt. C. J. J. D. & J.M.F.C.  
Saswad.

**:- C E R T I F I C A T E :-**

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

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|--------------------------------------|---|----------------------------------------------------------------------|
| Name of Stenographer (Grade 3)       | : | Mrs. S. R. Kamble                                                    |
| Name of the P. O.                    | : | Smt. D. M. Patil, 2 <sup>nd</sup> Jt.<br>C.J.J.D & J.M.F.C., Saswad. |
| Date of Order                        | : | 15/12/2021                                                           |
| Order signed by presiding officer on | : | 15/12/2021                                                           |
| Order uploaded on                    | : | 16/12/2021                                                           |