



Order Below Exh. 97
(Passed on 06/02/2025)

This is the application filed by third parties for adding them as a party in the suit.

2. The third party have submitted that plaintiff filed present suit for removal of encroachment and permanent injunction against defendant. It is came to know that plaintiff conducted measurement no. 38/2016 by Court Commissioner. Gat no. 1418 of defendant no. 1 to 3 is towards eastern side of Gat No. 1418. Towards their eastern side there is Gat No. 1419 of third party no. 1 Padmabai Salunkhe. Further, towards their eastern side there is Gat No. 1422 of third party no. 2 Sukhadev Salunkhe and towards their eastern side there is Gat No. 1420 of third party no. 3 Manisha Takawane. Towards their eastern side there is Gat No. 1421 of third party no. 4 Shivaji Jagtap and others. Gat no. 1417 to Gat no. 1423 are in S.No. 350. As per measurement of Gat no. 1418 in the measurement map it is shown that the holder of Gat no. 1419, 1422, 1412, 1413, 1414 have made encroachment. They want to implead them as a defendant in the suit to prove that the measurement map came before the Court is false. They have not made any encroachment as shown in the map. If the map is proved then it will affect their ownership. So also, due to false map more complications will arise. They have not received the notice of measurement. Their rights are involved in the suit. Plaintiff has not added them as a party in the suit. In order to protect their right they want to implead them as a party in the suit. Hence, they prayed to allow them to implead as defendant no. 7 to 10 in the suit.

3. Plaintiff filed her say at Exh.100. She opposed the application and submitted that she has filed a suit for removal of encroachment made by defendant in her Gat no. 1418. Gat no. 1417 is of defendant. The dispute is between plaintiff and defendant only. Third party have no concern to the suit property. As such there appears no reason to implead them as a party in the suit. As per order of Court commissioner measurement of Gat no. 1418, 1417 and 1411 is mentioned. Third party are not adjacent holder to the suit property. Therefore, they are not required to be added as a party in the suit. Therefore, prayed for rejection of the application.

4. Defendant no. 1 to 3 and 5 has not filed their Say. Defendant no. 4 filed his say at Exh. 102 and submitted that the application is not tenable. Third party having Gat no. 1419, 1420, 1421 and 1422. They have no concern with the suit property. They have not specifically mentioned what kind of prejudice will cause to them. Only because their properties are in S. No. 350 will not create any right or concern with the suit property. As per measurement map Court has not pass any order against third party for removal of encroachment. Further, third party have not produced anything on record to show that there is deference in actual measurement and measurement map. Third party are not adjacent holder to the suit property. Therefore, they are not added as a party in the suit. In view of reason mentioned above the application is liable to be reject.

5. Heard both the learned advocate at length. Perused the record. This is the suit for removal of encroachment and permanent injunction. It is the contention of third party that they want to implead them as a defendant in the suit to prove that the measurement map came before the Court is false. They have not made any encroachment

as shown in the map. If map is proved it will cause prejudice to them. Therefore, they are necessary party and they are requires to be add as a defendant no. 7 to 10. Therefore, prayed for addition of defendant no. 7 to 10 as a party in the suit.

6. Order 1 Rule 10 sub rule 2 specified that if court found that it is necessary in order to enable the court effectively and completely to adjudicate upon and settled all the questions involved in the suit, he may direct the addition of such parties. The prime requirement is the effective and complete adjudication of the suit . Whether the parties entitled to be added are such necessary party or not. The necessary party are those in absence of whom the effective judgment cannot be pass. At the same time proper parties are those parties whose presence are though not necessary but there presence could help the adjudication of the suit properly. The only question in this case is whether the party is necessary or not.

7. In the case in hand plaintiff prayed for removal of encroachment in her Gat no. 1418 at the hands of defendant no. 1 to 5. On perusal of record it shows that defendant no. 1 to 3 having gat no. 1417 towards eastern side of suit property and defendant no. 4 and 5 having gat no. 1411 is towards western side of suit property and defendant no. 6 having Gat no. 1412 is towards northern side of suit property. By taking advantage of the said fact defendant trying to encroachment in the suit property. Therefore, plaintiff conducted measurement of the suit property. Wherein it is shown that defendant have made encroachment in the suit property. Plaintiff seeking relief against defendant no. 1 to 6 only.

8. It is general rule that plaintiff is the Dominus litus and he may choose the persons against whom he wishes to litigate and cannot

be forced to sue a person against whom he does not seek any relief. However, if any third party is likely to suffer any injustice on account of the out come of the suit. They are entitled to get themselves impleaded. In the case in hand as already discussed above on perusal of nature of the proceeding and relief claimed in the suit. It appears that plaintiff claimed no relief against present third party. Further, in the present suit whether third party has encroached in the property of other or not is not going to be decided. So also, it the not the case of defendant that third party are in the possession or encroached in their land. Therefore, if third party are not impleaded in the suit the right or interest of the third party will not be prejudice. They will not suffer any injustice on account of the out come of the suit. Therefore, they are not necessary party in the suit. Merely they are holders in S. No. 350 will not entitled them to implead as a party in the suit. In view of discussion made above I am of the opinion that third party are not necessary party to be impleaded as a defendant in the suit. Hence, I pass following order.

ORDER

Application is rejected.

Date: 06/02/2025.
Daund.

(S. D. Mukkanwar)
5th Jt. Civil Judge, Junior Division
Daund, Dist- Pune