



Order Below Exh.08
(In R.C.A.No.653/2019)

1. This application is filed by intervenor **Kishor Shrinivas Rao** (in short “intervenor”) for impleading him as a party in appeal under Rule 10(2) of Order I of Civil Procedure Code, 1908 (in short “CPC”).
2. My Ld. Predecessor had called say of Appellant and Respondent. Respondent has not filed say on this application. Appellant has filed say at Exh.15 on 12 March 2021. Again Appellant has filed say overleaf the Exh.08.
3. Heard.
4. Perused record. Following points arise for my determination and are answered with reasons as follows.

| Sr. No. | Points | Findings |
|----------------|--|--------------------------|
| 1 | Whether intervenor shows that he is necessary party to the appeal? | No. |
| 2 | Whether leave should be granted to intervenor to add him as party? | No. |
| 3 | What order ? | Application is Rejected. |

:: REASONS ::

As To Point No.1 & 2

5. Point No.1 & 2 are discussed together as these points are interconnected. Respondent herein had filed R.C.S.No. 88/2011 for possession of suit property more specifically described in the plaint in the suit. Said suit was decreed Ex-



Parte & present appeal is against that judgment & decree. As per present Appellant, intervenor is her brother-in-law and he has right in the suit property as co-tenant. Intervenor was not arrayed as a party in the suit. As per intervenor, if he is not arrayed as a party in present appeal then it will cause injury to his right as he is enjoying the suit property in capacity of co-tenant along with present Appellant.

6. As per Rule 10 of Order I of CPC, Court may at any stage of proceeding either upon or without application of either party and on such terms as may appear to the Court to be just may ordered that name of any party be struck out or name of any person be joined as party in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved.
7. Appellant in her say at Exh.15 has resisted intervenor's application on ground that intervenor was not a party in the suit therefore, he cannot be added as party. Intervenor has filed this application after 7 years after the decree. He was not co-tenant and in no way is concerned with suit property. He was aware about pendency of R.C.S.No.88/2011 and other proceedings.
8. On perusal of record, it becomes that R.C.S.No.88/2011 was filed by present Respondent against present Appellant for possession of suit property. Original suit property was in the name of Dattaram Narayan Paudwal. He had given ground floor of suit property to one Tukaram Mali and remaining area of Ground floor of suit property was given on rent to



Shriniwas Koraga Rao. He was father-in-law of present Appellant & father of intervenor. That Shriniwas Koraga Rao was doing business of coal and premises were used as Vakhar/godown. Later on, he started hotel business in the suit premises. He died on 14 December, 1979.

9. If pleadings in R.C.S.No.88/2011 are considered then suit is for possession and it was filed for reason that suit property was not in use for long time. I have gone through the judgment & decreed of Ld. Trial Court wherein the Ld. Trial Court has observed that suit property was without use for more than 6 months. On basis of evidence & documents Ld. Trial Court has directed present Appellant to give possession of suit property to present Respondent. That suit is decreed Ex-parte.
10. If pleadings of Appellant are considered then nowhere she has stated that she & present intervenor were in joint possession or were co-tenant of suit property. Present intervenor along with his application has filed photocopy of R.C.S.No.145/2012 which is filed by him against present Appellant and Respondent. This suit is filed for declaring him as co-tenant in the suit property. Initially present Appellant has resisted the application of intervenor but later on she has filed say overleaf the application & has supported stand of intervenor.
11. These facts shows that now Appellant and intervenor have hand in gloves. Intervenor has not placed on record any



document which will show that he was co-tenant in the suit property. He has not shown that he is enjoying the suit property. As per intervenor, when he come in Civil Court, Panvel for meeting his Advocate, he came to know about the pendency of this appeal but in his application he has not given details as to on which date & at which time he came to know about the pendency of appeal. This pleading of intervenor on point of knowledge is vague & ambiguous. He is not filed any affidavit of concerned advocate to support this stand.

12. If facts on record are considered then it becomes clear that when R.C.S.No.88/2011 was going on at the same time R.C.S.No.145/2012 was pending. Decree in R.C.S.No. 88/2011 is passed on 31 October 2013. When intervenor is stating that he was co-tenant of suit property with Appellant then he must be aware of pendency of R.C.S.No.88/2011. In say at Exh.15 in para 8, present Appellant has specifically mentioned that intervenor had knowledge about R.C.S.No. 88/2011 as well as delay condonation application which was filed before District Court, Alibag in preferring this appeal. It appears that there is collusion between Appellant and intervenor. Statement that intervenor had no knowledge about the pendency of R.C.S.No.88/2011 is not acceptable. If facts and say of Appellant is considered then at present there is nothing on record to show that intervenor was co-tenant in the suit property along with present Appellant. Documents place on record by intervenor are not sufficient.



13. For aforesaid reasons, I am of the view that intervenor cannot added as a party. His application is devoid of merit & is liable to be rejected. As a result, I pass the following order.

ORDER

Application is rejected.

Sd/-

Panvel,
Dated :- 01/02/2024

(S. C. Shinde)
District Judge-3, Panvel
Dist.-Raigad