

Order below Exh.37 in Regular Civil Suit No.24/2015.

1. This is an application filed under Order I, Rule 10 of the Code of Civil Procedure by third party applicant, Milind Madhukar Gawaskar through his power of attorney Shekhar Chandrakant Tulaskar for impleading him as a defendant in the present suit contending that, he wants to bring the real fact before the Court in respect of situation of his property as well as situation of different properties of survey no.132, hissa no.1, which were sub-divided into 72 pot hissass. He further contended that no trees were cut down in the suit property. Accordingly, as per his contention, it is necessary to implead him as a defendant. Defendant nos.1 to 5 given no objection to implead third party applicant as a defendant by filing say vide Exh.43.

2. But, this application was strongly opposed by plaintiffs by filing say on this application itself contending that, the third party applicant filed this false application without having concern with the suit property and only to delay the matter. It was further contended that the plaintiffs filed this suit against the defendants for injunction and if third party applicant has any grievance in respect of survey no.9, hissa no.59, he can file a separate suit and as there is no concern of the property bearing survey no.9, hissa no.59 with the suit property, it is not necessary to implead third party applicant in this proceeding. So, the plaintiffs prayed for rejection of this application.

3. The learned advocate for third party applicant here argued that, the third party applicant is having interest in the property survey no.9, hissa no.59 and in respect of the situation of that property, the third party applicant wants to bring the real fact before the Court. So, it is necessary to implead the third party applicant as a defendant in this case. In support of this contention, he shown the map filed by defendant nos.1 to 5 alongwith

list Exh.44/6. So, as per her submission, it is necessary to add this third party applicant in this suit to decide the real dispute between the parties. The learned advocate for defendant nos.1 to 5 consented to implead the third party applicant as a defendant. On the contrary, to slap down the argument put forth by the learned advocate for third party applicant, the learned advocate for plaintiffs strongly argued that, the map shown by third party applicant is not authenticated map as no endorsement seen on this map and also as per contention of the application itself the map prepared in respect of consolidation of property bearing survey no.132, hissa no.1 was cancelled, reliance cannot be placed on this map. He further submitted that, the third party applicant has not filed any single document to show that he has concern with the suit property and also the plaintiffs have no grievance against the third party applicant. So, as per his submission to decide the dispute between the parties, this third party applicant is not necessary party. Therefore, considering all these aspects, he prayed for rejection of this application.

4. Considering the rival submissions and contentions of both sides, the following points arise for my determination, on which I have recorded my findings, with reasons, thereon as under.

	POINTS	FINDINGS
1	Whether it is necessary to add third party applicant in the present suit for determination of the real dispute between the parties ?	:- No.
2	Does the application is liable to be allowed ?	:- No.
3	What order?	:- Application is rejected.

REASONS

5. **As to point no.1 to 3 :-**

I gave thoughtful consideration to the submission made by both sides. I have also gone through the record & proceeding. I have also perused the map pointed out by third party applicant. Firstly, here I would

like to mention that, this suit filed by the plaintiffs against the defendants for simpliciter injunction with the compensation on the allegation that defendants were obstructing their possession over the suit property and also caused damage to the trees standing therein. The description of the suit property also clearly mentioned by which it is clear that the survey no.9 (old 132), hissa no.60 is the suit property and the plaintiffs have no concern with the property bearing survey no.9, hissa no.59, which allegedly owned by the third party applicant. So, in view of this admitted fact on record, though the third party applicant is concerned with survey no.9, hissa no.59, the plaintiffs nowhere concerned with it and also the plaintiffs are not asking any relief against the third party applicant. In this case, the real dispute between the parties i.e. the plaintiffs and defendants and not between the plaintiffs and third party applicant. So, considering this aspect, I do not found any force in the argument of learned advocate for third party applicant that, for the determination of real dispute between the parties, it is necessary to implead him as a defendant. As such, in the suit for injunction only the necessary parties are the person who obstructed and to whom he obstructs. Admittedly, the plaintiffs have no grievance against the third party applicant.

6. The learned advocate for third party applicant also, relying on the authority of Hon'ble Allahabad High Court in the case of *Smt. Shali Kumari and others Vs. Smt. Asha Srivastava and others, AIR 2005 Allahabad 35*, argued that as the third party applicant is adjoining land owner of the suit property, it is necessary to implead him as a proper party. I have gone through the authority, but with due respect, this authority is not helpful to the third party applicant and also not applicable in the present case in hand as such in the case before His Lordship the original plaintiff and the third party applicant both were claiming the exclusive ownership over the suit house. But, admittedly in the case in hand no such situation.

7. Here, I would also like to mention that, the present suit is kept for hearing on Exh.5 in which the third party applicant filed this application without showing any relevancy. So, considering this fact I found some force in the argument of learned advocate for plaintiffs that, this application is filed by third party applicant only to delay the matter.

8. Here, it is also worthwhile to refer a authority of Hon'ble Supreme Court in the case of Ramesh Hiranand Kundanmal Vs. Municipal Corporation of Greater Bombay & others, 1992 SCR (2) 1 : 1992 SCC (2) 524 and Hon'ble Rajasthan High Court in the case of Girdhari Lal Vs. Nagar Parishad & another, AIR 1988 Raj. 128. The ratio of these authorities are squarely applicable to the present case as in the case in hand also the plaintiff not asking any relief against the third party applicant.

9. Thus, considering all above aspects and discussion in forgoing paragraphs together with the ratio laid down in the authorities cited supra, I come to the conclusion that the third party applicant is neither a necessary nor a proper party. As such, it is not necessary to implead third party applicant as a defendant in this case. Accordingly, I answer point nos.1 and 2 in negative and to answer point no.3, I proceed to pass the following order.

ORDER

Application stands rejected.

Vengurla.
Date:- 31/12/2015.

(D. S. Zanvar)
Civil Judge (J.D.), Vengurla.