

ORDER BELOW EXHIBIT 14 IN RCS NO. 64/2022

(Passed on 26/07/2023)

This is an application filed by third party /applicant under Order I Rule 10 and Section 151 of the Code of Civil Procedure (for short 'the C.P.C.').

2] It is the contention of the applicant that the plaintiff has instituted present suit against Grampanchayat and Gramsevak, Parulebazar. The plaintiff has made allegation against applicant in para no.7 of the plaint. Applicant is whistleblower. He used to make complaints against illegal constructions. Alleged construction made by plaintiff upon sewers (गटार) of Grampanchayat, Parule Bazar. The said construction will create the danger to public health. Therefore, defendant grampanchayat has issued notice to plaintiff about alleged construction. The applicant is co-sharer in the land where alleged resorts are situated. Hence, it was necessary to implead him as a party to the present suit. But, the plaintiff has intentionally failed to do so. Lastly, it is contented by the applicant that in view of the aforesaid facts it is necessary to implead him as a proposed defendant to the present suit. If the present application is allowed, no harm is going to be caused to the plaintiff and the defendant. Hence, he prayed to allow the application. Hence, the present application.

3] The defendants have filed their say upon the application. According to defendants, necessary order may

be passed. The plaintiff strongly resisted the application by filing his say at Exhibit 39. He has denied the contentions in the application. It is his contention that the application is false and frivolous. The applicant or his family has no interest in the suit resorts. The present suit is filed against the defendant Grampanchayat Praule Bazar seeking various reliefs. No relief is claimed against the applicant. Further, there is no cause of action to the plaintiff against the applicant. According to plaintiff he is owner and in possession of the suit resorts. Applicant has no concern with it. Applicant has filed present application in order to cause suffering and economic loss to plaintiff. It is his further contention that in order to decide all the questions involved in the suit effectively, the presence of applicant is not necessary. He is not a necessary or proper party. He can file a separate suit against the plaintiff or the defendants if he intends to claim any relief against them. Hence, it is prayed that the application may be rejected.

4] Heard the learned advocates for both the sides. Perused the application and the say. Read the documents filed by applicant along with list at Exh.26.

5] Before adverting to merits of the application it is necessary to see who is a necessary party. The subject application is governed by the provisions of Rule 10 of Order I of the C.P.C. According to Order I Rule 10 of C.P.C. the court may order that the name of any party improperly joined be struck out. The court may also order that any

party whose presence is must for the determination of the suit be joined as a party. Thus, a necessary party is one in whose absence an effective decree cannot be passed. Similarly, a proper party is one whose presence is not essential for passing of an effective decree but, whose presence will help to completely and effectively decide the suit.

6] In the present case, it is contended by the applicant that he is co-sharer of the land into which suit resorts are situated i.e. Survey No. 45 Hissa No. 1 situated at village-Gavan, Tal.vengurla. He has filed 7/12 extract of Survey No. 45 Hissa No.1 for the period 2022-2023 wherein the name of Krishna Yashwant Patkar appears in the possessors column. It appears from the said 7/12 extract that the name of Krishna Yashwant Patkar was entered vide mutation entry No. 395. It also reveals that name of applicant does not appear into possessors column of 7/12 extract. The 7/12 extract also bears the name of plaintiff vide mutation entry no.1064. It was for the applicant to show some nexus of survey no.45/1 with suit resorts. But, that is not done. Therefore, there appears no prima facie substance in the contention of the applicant.

7] The learned advocate for the plaintiff contended that he has filed the present suit seeking relief of permanent injunction and declaration in respect of house no.1222 and 1258 (suit resorts) and notice dt.19.10.2022 issued by defendant Grampanchayat Parule Bazar to

plaintiff about alleged construction of compound over it's sewer. He further submitted that plaintiff is exclusive owner of suit resorts. Survey no.45/1 has no concern with the suit resorts. He further submitted that plaintiff sought relief against Grampanchayat Parule Bazar and not against applicant. He further submitted that applicant is stranger to suit resorts. Plaintiff is master of suit. There is no injury to rights of applicant. There is no nexus of mutation entry no.395 with suit resorts. He further submitted that the name of the applicant does not find place in the 7/12 extract of survey no.45/1, though his father finds the place overthere. Therefore, the applicant has no interest in the suit resorts.

8] The learned advocate for the plaintiff further submitted that the plaintiff do not intend to claim any relief against the applicant and the plaintiff cannot be compelled to join the applicant as party to the present suit against his wish. In support of his contentions he relied on the judgment of Hon'ble Supreme Court Of India in **Sudhamayee pattnaik and others Vs. Bibhu Prasad Sahoo and others 2022 Law Suit (SC) 1100**. On the contrary, the learned advocate for the applicant submitted that though the applicant is not a necessary party, but he is proper party to the present suit.

9] In the case of Sudhamayee (*supra*), the Hon'ble Supreme Court held that *unless the court suo motu directs to join any other person not party to the suit for effective*

decree and /or for proper adjudication as per Order 1 Rule 10 C.P.C., nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs.

10] If the contentions of the applicant are considered in the light of the above principles, it can be seen that the applicant has failed to show a prima facie nexus with the suit resorts and suit notice. Further, it is worthy to note that the plaintiff do not intend to claim any relief against the applicant. The plaintiff is claiming ownership over the suit resorts as owner whereas, applicant is claiming co-ownership over the land into which suit resorts are situated as co-owner. Thus, the impleadment of the applicant will change the scope and character of litigation. The plaintiff and the applicant are litigating their independent claims which can be done only by separate suit.

11] For the purpose of a party being a necessary party is that the party must be bound by the result of the action and the question to be settled must be a question which cannot be completely and effectually settled unless he is a party. In the present case, the learned advocate for the applicant submitted that he is whistle blower; the prayer of the plaintiff about the suit resorts and alleged notice issued by defendants is affecting the health of the society. However, according to me the decision of this suit

will be a judgment *in personam* and not *in rem*. Therefore, there is no question of getting him affected by the said prayer even if the suit is decreed. No prejudice is going to be caused to applicant even if he is not impleaded as party to the suit.

12] The plaintiff is opposing to the addition of the applicant. Thus, at this juncture I would take some assistance from the judgment of Hon'ble Supreme Court in **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others (Civil Appeal No. 5522-5523/2019)**. It is observed in this case *that a plaintiff cannot be compelled to join a party against whom he does not wish to contest, unless it is necessary by compulsion of law. However, it is always done at the risk of the plaintiff.*

13] The observations in the case of *Gurmit and Sudhamayee (supra)* are clearly applicable to the facts of the present case. If it happened that the applicant or some other persons are necessary for the just decision of this case it will be the plaintiff who will suffer for such non-joinder. However, at this stage, I am of the view that the applicant is neither necessary nor proper party for deciding the controversy between parties in the present lis effectively.

14] In view of the above discussion, I am of the opinion, that the application is liable to be dismissed. Hence, I pass the following order-

RCS No. 64/2022
CNR NO-MHSI-05-000464-2022

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ORDER

The application (Exh.14) is dismissed.

(Dictated and pronounced in open court)

Date : 26/07/2023
Place: Vengurla.

(K.K.Patil)
Civil Judge Junior Division, Vengurla.