

	<u>RCS NO.365/2000</u>
	(Raghunath Jadhav Vs Bhimrao Kamble & Ors.)
	(CNR : MHSN050001162021)

ORDER BELOW EXH NO.230

The present application is filed by applicant Abhijeet Patil under Order I, Rule 10 of the Code of Civil Procedure to add him as Defendant in the suit.

2. It is the contention of the applicant that he has purchase the some portion of the suit property i.e. the 13.87 Are from the legal heirs of Plaintiff No.2 by registered Sale-Deed bearing No.503/2017. In view of the Sale-Deed, his name was mutated in the 7/12 extract by Mutation Entry No.13974. At the time of purchasing the suit property, he is not aware about the pendency of this suit. He has purchased the property by giving appropriate consideration amount. He is bonafide purchaser. Since, the purchase of the suit property, he is in possession of the same. He recently came to know that the suit is pending in respect of the property, which is purchased by him. The said suit is filed for partition. The property, which is purchased by him for consideration is the part of the suit and therefore, to protect his right, he became the necessary party. If he is not made party, then his right would be decided behind his back. Therefore, he prayed to allow the application and to add him as a Defendant.

3. Plaintiff has filed his say *vide* Exh.234 and denied all the contentions made in the application. He further submitted that the applicant, Plaintiff and Defendants all are resident of Kurlap. The suit property is situated at Kurlap. The applicant is well aware about the

dispute and pendency of the suit. During the pendency of suit, Plaintiff has published the paper notice in respect of the pendency of the suit. Even though the applicant has purchase the suit property, the Plaintiff has not allow the applicant to take the possession of the part of the suit property, which is purchased by him. Therefore, he prayed to reject the application,

4. Heard both the parties. The present suit is filed for partition. It is the contention of applicant that he has purchase the part of suit property by registered Sale-Deed from heirs of Plaintiff No.2. Therefore, his interest is created in the suit property. If he is not added in the suit, then his right would be decided behind his back. As he has purchased the part of the suit property, he steps in the shoes of heirs of Plaintiff No.2 Therefore, he became the necessary party. Therefore, he prayed to allow the application and add him as a Defendant.

5. Plaintiff submitted that applicant is well aware about the pendency of the suit. In-spite of knowledge, he has purchased the suit property. The suit property was purchased by him in the year 2016, but he intentionally not filed this application before. Therefore, he prayed to reject the application.

6. As per Order 1 Rule 10 (2) of the Code of Civil Procedure.

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added”

7. From the plain reading of above provision, it can be gathered that, the party whose presence is necessary in order to enable to Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. In the present case, applicant has purchased the part of the suit property from the heirs of Plaintiff No.2. Therefore, he steps into the shoes of heirs of Plaintiff No.2. Applicant's valuable rights are involved in the matter, which cannot be decided in his absence. No doubt Plaintiff is the master of his suit and it is his choice to whom to add party or not. Applicant cannot compelled him to add him as a party in the suit against his will. But at the same time, it is discretion of the Court to who to add as a party in the suit. In the present case, it appears that the applicant is the necessary party and in his absence, the suit cannot be decided on merit. The addition of applicant as a Defendant will help to decide the matter on merit and it will also help to avoid the multiplicity of the proceedings. The delay which is caused can be compensated by awarding the cost. Hence, I pass the following order :

ORDER

- 1) The application Exh.230 is allowed subject to cost of Rs.500/- (Rupees Five Hundred only).
- 2) The plaintiff is directed to add applicant "Abhijeet Prakash Patil" as Defendant No.37 by carrying out necessary amendment in the plaint.

Islampur.
Date : 01/04/2023.

(Mangesh N. Jaiswal)
3rd Jt. Civil Judge, Jr. Dn., Islampur.

- : 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 to word, as per the original Order.

Name of Stenographer :- Sagar Anil Kate

Court Name :- 3rd Jt. Civil Court, Jr. Dn.,Islampur.

Date of decision :- 01/04/2023.

Order signed by PO. on :- 01/04/2023.

Order uploaded on :- 06/04/2023.