

**R.C.S.No.142/2021**

Dilip Dadu Kamble

V/s.

Savitribai G. Kamble Ors.2

Order Passed Below Exh.19

This is an application made by the third party applicant namely, Prabhakar Ashok Mane to add him as defendant in the present suit under Order I Rule 10 and Section 151 of the Code of Civil Procedure. It is contended that the suit is instituted for relief of injunction. Defendant No.1 namely, Savitribai Gulab Kamble executed sale deed in respect of C.S.No. 8811 situated at Miraj in favour of present third party applicant on 24-08-2021. Defendant No.2 who is son of defendant No.1, consented to the said sale deed. Likewise, Rahul Sadashiv Jadhav and Kalyani Prakash Kamble signed over said document as witnesses. Accordingly, the third party applicant became owner of the said property. In such circumstances, the plaintiff instituted present suit against Savitribai Gulab Kamble and others and did not mention about the sale deed existed in favour of the third party applicant. He suppressed the said fact from the Court. The third party applicant when got knowledge about present suit, he immediately made present applicant. If, third party applicant impleaded as defendant, the plaintiff and defendants would not put to any loss. On the contrary, fact will come on record and it will be helpful to the Court in dispensing proper justice. Ultimately, third party applicant urged to add him as a defendant and accord him opportunity of filing his say and written statement in the present suit.

02. The plaintiff filed his say at Exh. 26 and opposed the contentions in the application. He specifically averred that present

suit is instituted in respect of property bearing C.S.No. 337/1 and relief is sought only to the extent of said property. The plaintiff has no concern with C.S.No.8811 on which the third party applicant is claiming his rights. Rather, the suit property C.S.No.337/1 and C.S.No. 8811 are two different properties. The property C.S.No.8811 appears to be purchased by third party applicant from the defendants. However, said property is not suit property or subject matter of present suit. The third party applicant has no concern with either present suit or the suit property. Moreover, no rights of third party applicant are attached to the suit property. Hence, his rights will not be affected if he is not added as defendant in the present suit. The third party applicant has independent remedy to claim relief against the defendants. On these grounds, the plaintiff prayed for rejection of application.

03. Heard both sides. From the pleadings and arguments, following points arise for consideration. I have recorded my findings thereon for the reasons to follow:

Sr.No.	Points	Findings
1.	Whether the third party applicant is necessary party to the present suit ?	No.
2.	What order?	As per final order.

REASONS

As to points No. 1 and 2 :

04. The third party applicant along with list at Exh. 22 filed copy of sale deed Dt.24-08-2021 in respect of C.S.No.8811 purchased by him from defendant No.1 to which defendant No.2 consented. The third party applicant submitted his written arguments at Exh. 35

wherein, it is submitted that he has purchased property bearing C.S.No.8811 from defendant No.1 on 24-08-2021. The plaintiff in his plaint para No. 3 pleaded that "after purchasing suit property by the plaintiff, they are residing in the suit property by repairing it and they have not made new construction over it. In the circumstances, defendant No.2 made complaint application to defendant No.3 (Municipal Corporation) stating that the plaintiff has made construction over wrong property i.e. C.S.No.8811 and asked to remove the said construction". Thus, the plaintiff mentioned about C.S.No.8811 in the plaint which is now purchased by present third party applicant. The fact of sale deed is known to the plaintiff. However, he purposefully suppressed the said fact from the Court. Hence, according to third party applicant, he is necessary party to the suit.

05. On the other hand, it is argued by the plaintiff that he sought relief relating to C.S.No.337/1 and not about property C.S.No.8811 over which the third party claiming his right. Both properties are altogether different. Hence, the third party is not necessary party to the suit.

06. In context to contentions of both sides, on perusal of plaint it appears that the plaintiff has sought relief of perpetual injunction restraining the defendants from causing obstruction to his peaceful possession over the suit property bearing C.S.No.337/1 and mandatory injunction directing defendant No.3 for reinstating name of the plaintiff over property No. 212/40/0, Bill No. 167508. Thus, it appears that the plaintiff never sought any relief relating to property No. 8811 over which the third party claims his right.

07. As per third party applicant, the plaintiff in plaint para No.3 mentioned about C.S.No.8811 and therefore, he is necessary party to the suit. However, the third party applicant has not shown how the suit property C.S.No.337/1 and his property No.8811 is related or how his rights are affecting relating to property No.8811 in present suit. The third party even prima facie not established how his rights are going to affect by decision of present suit. After all it is for the plaintiff to prove his case by adducing cogent evidence. The defendant is also having right to rebut claim of the plaintiff by adducing his evidence and ultimate decision of the suit would bind the parties. In such circumstances, role of third party applicant would not come into play.

08. The nature of present suit is such that even in absence of the third party applicant, effective and complete adjudication can be made and the Court can settle all the questions involved in the suit. If the third party applicant feels that his rights in respect of C.S.No.8811 are affecting, he can very well take recourse of law independently. For the aforesaid reasons, the third party applicant is not necessary party to the present suit. In fact, the joining of third party in present suit, would embarrass the parties. The mere fact that a fresh litigation can be avoided is no ground to invoke the powers under the rule in present suit. Ultimately, it is hold that the application is devoid of merit. Hence, following order is passed.

ORDER

1. The application is rejected.
2. No order as to costs.

Miraj.
Date : 17.10.2023.

(V. V. Khulape)
Civil Judge, Junior Division,
Miraj.

CERTIFICATE

I affirm that the contents of this P.D.F. file, are same word to word, as per the original order.

Name of the Stenographer.	:	K. A. Udagave
Court.	:	Civil Judge Junior Division and J.M.F.C. Miraj
Dictation Date	:	17.10.2023
Order signed by the Presiding Officer on.	:	17.10.2023
Order uploaded on.	:	17.10.2023