

Order below Exh. 45 in RCS No. 244/2021
(Tukaram & ors. Vs. Samadhan & Ors.)

This is an application as per order 1 rule 10 (2) of the Code of Civil Procedure, 1908 (Hereinafter referred to as C.P.C. for the sake of the brevity) by third party applicant Krishna Dadaso Waghmode with prayer to add him as defendants in the present suit.

2) It is contended by the present third party applicant that, the plaintiffs have caused obstruction to the use of the road mentioned in the map. The plaintiffs have not joined him in the proceeding before revenue authority also. The road in dispute is being prepared by having contribution of the villagers. The third party applicant has also contributed for the same. He is holder of the property of Gat No. 713. The road in dispute is useful for the villagers, students and cattle. The third party applicant is having the rights involved in the road in dispute. Hence he has filed the present application.

3) It is further contended that, if the third party applicant is added as the defendant in the present suit, both the parties would not suffer any loss. The presence of the third party applicant is necessary for the just and proper decision of the present matter. Finally third party applicant prayed for adding him as the defendant in the present matter.

4) The say of plaintiffs as well as defendants was called for upon the present application. The plaintiffs filed the say to the present application at Exh. 49 and contested the application. It is counter contended by the plaintiffs that, the third party has no interest regarding the suit property. He has no documentary evidence regarding the same.

No prayer is made against the third party. Moreover, the third party was not party before the revenue authority. Third party applicant and the defendants have collusion with each other. The present application is filed only with intention to prolong the matter. The third party applicant has no interest with the subject matter. Finally the plaintiff prayed for the rejection of the application.

5) The defendants also filed the say to the application by contending that, the third party has prima facie shown that he has interest in the disputed road. Hence, the defendants have no objection to add him as the defendant to the suit.

6) Perused application, say filed thereon, plaint, written statement and documents filed on record. Heard Ld. Advocate Mr. S. A. Kumbhar for the third party applicant, Ld. Advocate Mr. A. A. Nitawe for the plaintiffs, Ld. Advocate Mr. A. B. Dudhal for defendants. All of them argued in line with their respective contention put up through their respective pleadings.

7) Considering the rival submissions, it is necessary to see that, whether the third party applicants are required to be joined as defendant in the present suit. So far as this prayer is concerned, it is necessary to see that, whether the third party applicants show that, they are either necessary or proper parties to the present suit or they ought to have been joined as defendants to the present suit.

8) Order 1, rule 3 of The Code of Civil Procedure, 1908 prescribes the principles regarding joining any person as defendant. As

per the said rule, all persons may be joined in one suit as defendants where-

- a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- b) if separate suit brought against such persons, any common question of law or fact would arise.

9) So far as this provision is concerned, the plaintiffs have instituted the present suit for declaration regarding the order passed by Tehasildar, Jath in No. Land/Mamalatdar Court Act-05/SR/12/2020 dated 08.10.2020 and for perpetual injunction against the defendants with prayer to restrain them from causing obstruction to their peaceful possession over the suit property and from implementing the abovesaid order passed by Tehasildar. The plaintiffs are claiming the relief against the defendants regarding cause of action arose on 08.10.2020 and 05.07.2021 contending that the defendants have obstructed their peaceful possession by trying to creating the road other than the road shown in the map.

10) So considering the relief claimed by the plaintiffs, they have joined the defendants No. 1 to 5 as party to the suit. Perusal of entire plaint reveals that the plaintiffs have not pleaded any facts giving rise to cause of action against the third party applicant. Moreover, the plaintiffs have joined the defendants as the party to the suit who have claimed for removal of the alleged obstruction to the road caused by the plaintiff as per the provisions of section 5 of Maharashtra Land Revenue Code. Perusal of the order passed by the Tehasildar, Jath reveals that, the third party applicant is not party to the said application. It is also not contended

by the third party applicant hat, he was party to the proceeding before revenue authority and the plaintiffs have avoided to join him in the present suit. So also, it is the contention of the third party applicant that he has interest and having cause of action against the plaintiff then he should have joined the defendants in the application filed before Tehasildar, Jath. However, he has not done so. Hence, he could not have any right of audience in the present suit as the present suit is pertaining to the order passed by the Tehasildar, Jath in abovementioned proceeding and the plaintiffs have joined all the parties in the present suit who were party to the application before Tehasildar.

11) So far as the contention of the third party applicant regarding the alleged contribution paid by him for the purpose of construction of the road is concerned, it is altogether different aspect which is not the matter of trial in the present suit. Moreover, the third party has right to have appropriate legal action separately for protecting his alleged rights against the Grampanchayat and concerned parties. However, the said claim could not be considered in the present frame of suit for declaration and injunction as pleaded by the plaintiffs. Hence, I am of the the opinion that, no conditions as provided under order 1 rule 3 have been satisfied in the present case.

12) By the present application, the third party applicant is praying for adding him as defendants. Hence, he is required to show that, the he is either necessary or proper parties to the present suit. Order 1, rule 10 (2) empowers the court to add any person as party to the suit suo moto or on application of any person. As per the said rule,

- i) The necessary party is one, whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed.
- ii) The proper party is one, in whose absence an effective order can be passed, but whose presence is necessary for the complete and final decision on the question involved in the proceeding.

13) So far as the present suit is concerned, the plaintiffs have claimed the reliefs against the existing defendants as they caused obstruction to their peaceful possession over the suit property. As the plaintiff has prayed only for declaration and perpetual injunction against the defendants in respect of the suit property, at the conclusion of the trial such order can be passed against the defendants without the presence of present third party applicant. Hence, considering the frame of the suit and the fact in issue, I am of the opinion that, the third party applicant is not necessary party to the present suit.

14) So far as question whether the third party applicant is proper party or not is concerned, it is necessary to see that, whether his presence is necessary for a complete and final decision on the question involved in the suit. In the present suit, the question involved is that, whether the plaintiffs are entitled to the reliefs of declaration and perpetual injunction restraining the defendants from causing obstruction to their peaceful possession over the suit property or not and from implementing the order passed by the Tehasildar or not . In order to adjudicate the said claim, the plaintiffs are required to establish that, the order passed by Tehasildar, Jath is not proper or valid, they are in possession of the suit property, obstruction from the defendants and consequently they are entitled to

reliefs claimed. The plaintiffs are claiming only for protection of their possession against the defendants and not against anybody else. So considering these aspects also, I am of the opinion that, the third party applicant i.e. the proposed defendant is neither necessary nor proper parties to the present suit.

15) Considering all these aspects, I am of the opinion that, the third party applicant is neither necessary nor proper party to the present suit. Hence, the payer of third party applicant for adding him as defendant is liable to be rejected. In the result, I pass following order.

1. The application is rejected.
2. The costs is main cause.

Place :- Jath
Date :- 27.04.2022

(Ekanath K. Chougale)
(JO Code -MHSN2400)
Civil Judge Junior Division,
Jath

CERTIFICATE

I affirm that, the contents of this P.D.F. file Oder/Judgment is same word to word, as per the original Oder/Judgment.

Name of the Stenographer	S. A. Jamadar Stenographer Grade-III
Name of the Court	Ekanath K. Chougale. Civil Judge Jr. Dn. & J.M.F.C., Jath, Tal.- Jath, Dist. - Sangli.
Date of decided	27/04/2022.
Signed by Presiding officer on	05/05/2022.
Uploaded on	17/05/2022.