



ORDER BELOW APPLICATION (EXHIBIT 49) IN
REGULAR CIVIL APPEAL NO. 109/2011
(BHAVANI & OTHS. VS. AMARSINH & OTHS.)
(PASSED ON 18/11/2023)

Nature of the Application.

1. This is an application filed by Shri. Bhavani Devi Devasthan, Karkamb (for short 'Devasthan'), Manager/Pujari-Omkareshwar Bhavani Patil age- 36 years, Occupation – Agriculture and Pujari R/o : Karkamb, Taluka - Pandharpur, District - Solapur (for short 'applicant') praying to implead it/him as a defendant in the suit.

Contents in the Application.

2. The applicant has contended that the defendant Nos. 1 to 6 and 12 to 14 have filed suit seeking partition and separate possession in respect of the land situated at village Karkamb and Bibidarfal. The defendants have filed written statement (Exhibit 71) and have raised serious objections in respect of the land Gat No. 312 admeasuring Hectare 3.62 Are potkharab Hectare 0.43 Are situated at village Karkamb, Taluka – Sangola, District – Solapur (for short 'land').

3. The temple of Shri. Bhavani Devi is situated in the land. The land is owned and possessed by the Devasthan. The land was not owned and possessed by the predecessor of the defendant Nos. 1 to 6 and 12 to 14 namely Bhavani @ Ramrao @ Ramchandra Sheti Patil. During British regime the land of which original Survey No. 130 was given in possession of predecessors of Bhavani Sheti Patil by executing a *sanad* on condition to utilize its income for the purpose of management,

maintenance of the Devasthan and for performing other activities like *pooja* etc. The defendant Nos. 1 to 6 and 12 to 14 were not having any authority to transfer the land and in that regard there is a decision in the Regular Civil Suit (for short 'R.C.S.') No. 216/1956. Thus, after death of her husband deceased-Indirabai was not having any hereditary right in respect of the land. In spite of that Indirabai executed a will dated 08/04/1974 in respect of the land.

4. During pendency of the previous suit a decree is passed in the R.C.S. No. 15/1996 in respect of the land.

5. The Devasthan/applicant has right and interest in the land. The Devasthan/applicant is necessary party to the suit. Therefore, it is necessary to implead it/him, as a defendant in the suit.

6. On these grounds, the Devasthan/applicant has prayed to grant the application.

Contents in the Say of the Respondent Nos. 1 and 2.

7. The respondent Nos. 1 and 2 (for short 'respondents') have filed their say (Exhibit 56) and have strongly objected the application.

8. The respondents have contended that the application is not legal and tenable. The Devasthan/applicant has no concern with the dispute in question. The appeal is filed against the judgment and decree in R.C.S. No. 130/2001 dated 29/04/2011. In R.C.S. No. 130/2001 the applicant's father was defendant and during his lifetime he has preferred this appeal. Later on he died and the applicant is impleaded as appellant No. 1C as his legal representative. Therefore, the applicant cannot be impleaded as a defendant.

9. The respondents are having right to perform *pooja* and religious functions. Accordingly, a decree is in existence in their favour. The applicant's father was aware of all these facts and therefore, he had

not raised any objection during his lifetime.

10. On these grounds the respondents have prayed to reject the application.

No Say of the Appellants and the Other Respondents.

11. The appellants and the other respondents have failed to file say.

12. Hence, the application proceeded without say of the appellants and the other respondents.

The Argument.

13. I have heard advocate for the applicant and advocate for the respondents, at length.

14. They argued in consonance with their contentions in the application and say. In order to avoid repetition, I will deal with the arguments at the time of discussing the points taken for consideration.

15. None appeared and argued for and on behalf of the appellants and the other respondents.

Points and Findings.

16. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons stated below :-

	Points	Findings
1.	Whether the Devasthan/applicant proves that its/his presence is necessary in the suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit/appeal, as alleged ?	No.

2.	Whether the amendment can be allowed, as prayed for ?	No.
3.	Whether the application has the effect of delaying the hearing of the appeal ?	Yes. As per final order.
4.	What order ?	Application Rejected. As per final order.

**Relevant Statutory Provisions Under
Order I Rule 1, 3 and 10 of the C.P.C.**

17. Before proceeding to discuss the merits of the application, for better appreciation, let me reproduce the relevant statutory provisions under Order I Rule 1, 3 and 10 of the C.P.C.

17.1 Order I Rule 1 of the C.P.C. reads as under :-

1. Who may be joined as plaintiffs. -

All persons may be joined in one suit as plaintiffs 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 in such persons, whether jointly, severally or in the alternative; and
- (b) If such persons brought separate suits, any common question of law of fact would arise.

17.2 Order I Rule 1 of the C.P.C. is not exhaustive before a plaintiff can join with him several other plaintiffs in the same suit, two conditions must be satisfied before two or more plaintiffs can be joined in the same suit :-

- (i) a right to relief in them arises in respect of the same act or transaction or series of acts or transaction; and
- (ii) if separate suit were instituted by them any common question of law or fact would arise.

17.3 Order I Rule 3 of the C.P.C. reads as under :-

3. Who may be joined as defendants. -

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 alternatively; and
- (b) If separate suits were brought against such persons, any common question of law or fact would arise.

17.4 Order I Rule 3 of the C.P.C. is not exhaustive before a plaintiff can join several defendants in the same suit, two conditions must be satisfied before two or more defendants can be joined in the same suit :-

- (i) a right to relief against them arises to respect of the same act or transaction or series of acts or transaction; and
- (ii) if separate suit were instituted against the defendants any common question of law or fact would arise.

17.5 The two conditions mentioned in Order I Rule 1 and 3 of the C.P.C. are not alternative but must exist together. It is a settled principle of law that plaintiff is the master of the litigation initiated by him. He is dominus litis and he cannot be compelled to join somebody with whom he does not want to fight.

17.6 The object of Order I Rule 1 and 3 of the C.P.C. is to avoid multiplicity of suits and needless expenses to the parties if it could be avoided without embarrassment to the litigants concerned and the Court. In order to justify the joining of more than one person as plaintiffs/defendants, it is not necessary to show that all the

plaintiffs/defendants are interested in all the reliefs and transactions comprised in the suit. Nor can it be said that no one can be joined as a plaintiff/defendant unless some specific relief is claimed in favour or against him.

17.7 To constitute the same act or transaction or series of acts or transactions, a mere finding that there were different causes of action in favour of the different plaintiffs or as against the different defendants or different sets of plaintiffs/defendants is not sufficient. The question as to joinder depends not on a common relief or common cause of action but on common basis of acts or series of acts. The common question of law or fact must be of sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matter should be disposed of at the same time. A common question of law or fact does not presuppose an identity of the causes of action or of the interested parties.

17.8 It means, a party who is not claiming any relief cannot be joined as a plaintiff and a party against whom no relief has been claimed cannot be joined as a defendant.

17.9 Order I, Rule 10 of the C.P.C. reads as under:-

10. Suit in name of wrong plaintiff.

- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
- (2) **Court may strike out or add parties.-**

The Court 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.

- (3) No person shall be added as a plaintiff suing without a new friend or as the next friend or a plaintiff under any disability without his consent.
- (4) **Where defendant added, plaint to be amended.**
Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
- (5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

17.10 Order I, Rule 10 Sub-rule (1) of C.P.C contemplates cases in which a suit is brought by a plaintiff and he subsequently discovers that he cannot get full relief without joining some other person as co-plaintiff or, where it is found that some other person, and not the original plaintiff, is entitled to the relief claimed. In the former case, the application (which must be made by the original plaintiff) will be for adding, and in the latter, for substituting that other person as

plaintiff. Liberty to amend may be given upon the terms that the plaintiff should pay to the defendant his costs of the suit including the order of amendment, and that the new plaintiff should only be entitled to such relief as he could have claimed if the suit had been commenced at the date on which he was added as a party.

17.11 Under Order I, Rule 10 Sub-rule (2) of C.P.C, the power to strike out as well as to add parties may be exercised at any stage of the proceedings, and even without any application by a party. Indeed, Order I, Rule 10 Sub-rule (2) of C.P.C can be invoked either by a party to the suit or by the Court suo-motu or by a third party who desires to be added as a party. Mere inaction on the part of a plaintiff to implead a party does not affect the Court's power under this sub-rule. The power of the Court under this sub-rule is of discretion to be exercised judicially keeping in mind that one of its objects is to prevent multiplicity of suits and conflict of decisions.

17.12 I would like to refer usefully the following rulings :-

- a) Lakhmichand Rewachand V/s. Kachubhai Gulabchand, ILR (1911) 35 Bom. 393.
- b) Harbhajan Singh V/s. Malook Singh, 1999 SCC OnLine P & H 494,
- c) Lakshamma V/s. Kamamma and Another, AIR 2001 Kar. 120,
- d) L. Puttaiah and Ors. V/s. Annaiapa (Dead by his LRs.) and Ors, ILR 2003 KAR 3437,
- e) Amit Kumar Shau V/s. Farida Khatoon, (2005)11 SCC 403,
- f) Chitralkha Builders and Smt. Nina Anil Shah V/s. GIC Employees Sonal Vihar Co-op. Housing Society Ltd. and Ors, (2005)4 Mh.L.J. 360,
- g) Bhogadi Kannababu & Ors. V/s. Vuggina Pydamma & Ors., AIR (2006) 5 SCC 532.
- h) Sumtibai and Ors. V/s. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt.

Mankanwar W/o. Parasmal Chordia (dead) and Ors., AIR 2007 SC 3166,

- i) I. Aga Reddy and Others V/s. S. Dharneet Singh and Another, 2013 SCC OnLine AP 94,

The principles under Order I Rule 10 of C.P.C and deducible from the rulings relied by me (supra) can be summarized thus :-

- a) The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff, it is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights.
- b) It is not enough that the plaintiff's right and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervener must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally-that is by curtailing his legal rights.
- c) **The application filed under Order I Rule 10 of the C.P.C. need not depend upon the existence of absolute rights. It would be sufficient, if the parties have some interest in the property,**

which is the subject matter of the suit.

- d) One of the factors to be taken into consideration while deciding the application filed Order I Rule 10 of the C.P.C. is that the impleadment is necessary to avoid multiplicity of proceedings.**
- e) The power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property.** The question is whether the right of a person may be affected if he is not added as a party and whether he has interest in the suit property what is required to be seen is whether he would suffer any prejudice, if he is not allowed to participate in the suit. Such right, however, will include necessarily an enforceable legal right.

17.13 It is well settled that necessary parties are parties necessary to the constitution of the suit and without whom no decree at all can be passed. Proper parties are those whose presence enables the Court to adjudicate more effectually and completely the question raised in the suit. A necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. Against a necessary party there must be a right to same relief in respect of the matters involved in the proceedings in question; it must not be possible to pass an effective decree in the absence of such a party. The test for determining the effectiveness of a decree is whether the decree can be

executed without the presence of the party in question as regards the property to be decreed in favour of the plaintiff.

Reasons as to Point Nos. 1 and 2.

18. The appellants have filed this appeal against the judgment and decree in the R.C.S. No. 130/2001.

19. Admittedly, the applicant is impleaded as legal representative of Bhavani Shetti Patil that is to say as the appellant No. 1C.

20. I have applied my mind to the contention of the advocate for the Devasthan/applicant and the respondents and their pleadings. I am of the considered view that the Devasthan/applicant has no legal right to seek its/his impleadment in the suit/appeal. The reasons are :-

- i. That the applicant is already impleaded as necessary party to the constitution of this appeal as appellant No. 1C which follows that he is party to the suit/appeal.
- ii. That the applicant as appellant No. 1C is at liberty to raise any defence in consonance with the claim or defence of his predecessor-Bhavani in the suit or appeal so as to disbelieve the case of the respondents.
- iii. That the claim set up by the applicant in this application will irretrievably prejudice as it is diametrically opposite in the context of the claim for assertion of title made by his predecessor-Bhavani with regard to the suit and appeal and it will certainly affect the right of the respondents accrued by way of admissions in the previous pleading, if any, by his predecessor-Bhavani, therefore, also the application is not tenable.
- iv. That the impleadment of Devasthan/applicant is not

proper and for effective adjudication of the suit or this appeal.

- v. That there are no bonafides in the application but it is filed with malafide intention to cause injury and hardship to the respondents.
- vi. That according to the applicant the Devasthan has right in respect of the land as the land is owned by it and he is its Manager and *Pujari*, however, when the applicant is already party to this appeal the application itself is not legal and tenable.
- vii. That considering the relief sought in the suit and in this appeal no independent legal right accrues to the Devasthan and also to the applicant to seek its/his impleadment in the suit as third party defendant.
- viii. That if the Devasthan/applicant is not allowed to participate in the suit as third party defendant it/he will not be prejudiced.
- ix. That if the Devasthan/applicant is not impleaded in the suit as third party defendant, there will not be multiplicity of proceeding.
- x. That if the Devasthan/applicant is not impleaded in the suit as third party defendant no harm or injustice will be caused to it/him.

21. In short, in view of the principles discussed, *supra* under Order I Rule 1, 3 and 10 of the C.P.C. and my discussion above I hold that the Devasthan/applicant is not necessary party to the suit or appeal as the applicant's predecessor-Bhavani was well aware of all the facts pleaded by the Devasthan/applicant in this application in respect of

its/his alleged rights in the land but he never chose to implead Devasthan as a party to the suit or this appeal or himself as a Manager and *Pujari* of Devasthan but filed the suit and appeal independently and as the applicant has entered in the shoes of his predecessor-Bhavani he has no independent right to claim that he is Manager and *Pujari* of the Devasthan and the Devasthan as well as he has right to be impleaded in the suit or this appeal as a third party defendant/respondent. The applicant is already impleaded in this appeal which is sufficient to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in this appeal.

22. Accordingly, I answer point Nos. 1 and 2 in the negative.

Reasons as to Point No. 3.

23. The original suit was filed in the year 2001 which was decreed on 29/04/2011. The appeal is filed in the year 2011.

24. The applicant's predecessor-Bhavani was well aware of the fact that he has right and interest in the land and the rights and liabilities of the Devasthan. It is no where the contention of the applicant that his predecessor-Bhavani or he was not aware of the litigation in respect of the land and pendency of the suit and this appeal. Even if he contend so it can not be believed by any stretch of imagination considering his impleadment in this appeal. This application is filed on 01/12/2022, which showed that the applicant has not acted diligently and promptly.

25. The record and proceeding of this appeal shows positively that the applicant has delayed the hearing of this proceeding/appeal by filing the application on 01/12/2022 and not taking steps at earlier stage. In my firm opinion this conduct of the applicant is self speaking that any how he is interested in prolonging the hearing of this appeal

and has not come with clean hands before the court.

26. Moreover, by no stretch of imagination it can be concluded that the applicant was not aware of the suit or the appeal. In spite of that this application is filed. The applicant has nowhere stated the fact that he is appellant No. 1C in this appeal. No explanation is coming on record by the applicant why this is not done. Due to this act on the part of the applicant, the respondents have unnecessarily suffered and matter has lingered. Thus this application, certainly has the effect of delaying the hearing of the appeal. The applicant cannot escape from his liability by merely filing such application at this stage. This unwarranted action of filing this application is unexplained and without any legal and valid reason.

27. Thus, before parting with the order, at the cost of repetition, I cannot refrain myself from observing that the overall conduct of the applicant in this appeal and more specifically by filing this application he has caused delay in the proceeding. The hearing of the appeal is adjourned at the behest of the applicant. Therefore, this is a fit case in which the appellants (excluding the applicant), the respondents and the other respondents are required to be reimbursed reasonably by awarding suitable costs. However, the appellants and the other respondents have not contested the application but it is contested by the respondents, only. Therefore, the respondents only are entitled to receive the cost. The state i.e. the Taluka Legal Services Committee, Pandharpur is also entitled to share the cost amount along with respondents, as directed from time to time by the Hon'ble Supreme Court and the High Court. The cost is quantified at 10,000/- (Rs. Ten Thousand only) considering the nature of appeal, delay caused, the overall conduct of the applicant and the stage of this appeal. The

respondents are at liberty to withdraw the cost of Rs. 4,500/- each and the cost of Rs. 1,000/- is required to be credited/deposited in the account of Taluka Legal Services Committee, Pandharpur. For this view, I am buttressed by the case of Shiv Cotex V/s. Tirgun Auto Plast Pvt. Ltd. And others, 2012 (2) Mh.L.J. 439, wherein the Hon'ble Supreme Court has observed :-

"It is sad, but true, that the litigants seek and the Court grant adjournment at the drop of the hat. It is high time that Courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of the judicial process and it this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The Courts, particularly trial Courts, must ensure that on every date of hearing, effective progress takes place in the suit. **A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard.** (emphasis supplied) The parties to a suit – whether the plaintiff or the defendant – must co-operate with the Court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

28. Accordingly, I answer Point No. 3 in the affirmative, as per final order.

Reasons as to Point No. 4.

29. To sum up, in view of what is discussed above, I, therefore, pass an order, rejecting this application and directing the applicant to pay costs to the respondents and the state, as per final order.

30. It goes without saying that since this application is rejected, there is possibility that the applicant will not pay the costs. The respondents can execute the order and recover the costs by filing

execution proceeding. However, it is not possible for the state to recover the costs. Considering this if such a situation arise then it shall be necessary to recover the cost of Rs. 1,000/- by sending the matter to the Collector to recover it, as arrears of land revenue. For this purpose, the Superintendent is required to be directed to take necessary steps.

31. Accordingly, I answer point No. 3 as application rejected, as per final order.

32. In the result, I pass the following order.

ORDER

1.	The application (Exhibit 49) is rejected as here-in-below :-		
	a)	The applicant is directed to pay the costs for causing delay in the proceeding which is quantified at Rs. 10,000/- (Rs. Ten Thousand only) to be deposited in the Court on or before 02/12/2023.	
2.	The cost awarded shall be apportioned as herein below :-		
	a)	The respondent Nos. 1 and 2.	Rs. 4,500/- (Rs. Four Thousand Five Hundred only) each.
	b)	The Taluka Legal Services Authority, Pandharpur.	Rs. 1,000/- (Rs. One Thousand only).
3.	The cost of Rs. 9,000/- (Nine Thousand only), if not deposited by the applicant, then it shall be recovered by the respondent Nos. 1 and 2 by filing execution proceeding, if so advised.		
4.	The cost of Rs. 1,000/- (One Thousand only), if not deposited by the applicant, then it shall be recovered as arrears of land revenue.		

5.	The Superintendent is directed to forward a letter to the Collector to recover the cost of Rs. 1,000/- (One Thousand only) from the applicant, if necessary, as arrear of land revenue and to remit the amount recovered, to this court, as early as possible.
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(Pronounced in the open Court).

Date : 18/11/2023.

sd/-
(M. B. Lambe),
District Judge-1,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 18/11/2023
- (d) Order uploaded on : 21/11/2023