

ORDER BELOW EXH.36**IN****R.C.S.No. 14 of 2021**

(CNR No.MHSO06-0001482021)

This is an application for amendment.

2. The third party has filed this application to join him as a defendant in the suit. It is submitted that originally suit property belonged to the third party. It was later on acquired. The plaintiff fraudulently obtained double land in the rehabilitation proceeding. Therefore, third party has filed complaint regarding the same. On said complaint, the allotment of land in favour of plaintiff has been cancelled. The whole proceeding to cancel the allotment of the plaintiff started on the complaint of the third party. The plaintiff has cheated the Government by obtaining land on two times. Third party is necessary in order to bring these facts on the record. The plaintiff has intentionally omitted third party. Hence, he prayed to join him as a defendant.

3. The plaintiff has challenged application as false and not maintainable. It is submitted that third party has no title, or interest in the suit property. The plaintiff has challenged action on the count of order of Deputy Collector being void ab-initio for which, the presence of third party is not necessary. The plaintiff is dominus litus to decide who should be the defendant. Therefore, the application be rejected.

4. Heard both the learned advocates. Perused the record.

5. In the plaint para No.6, there is a reference that allotment of land to the plaintiff has been cancelled on the complaint of a bogus person. It is stated to be done without following due process of law. Therefore, the plaintiff has claimed the declaration that said order is not binding on him and prayed

for the injunction. In such circumstances, there is a clear reference even in the plaint that somebody has filed complaint in this regard and then proceedings were initiated by the concerned authority. Hence, third party is not totally alien to the proceeding. The third party has filed documents along with list vide Exh.41. It is copy of complaint filed to the revenue authorities and order passed by the Tehsildar. These documents support the contentions of the third party. He was the original owner of the acquired land. Though, he is not the current owner, but he has challenged the order of allotment as obtained by fraud by the plaintiff. In this matter, it is pertinent to note that even though status quo order is passed on 15.03.2021, still today defendants have neither filed say to Exh.5 application, nor filed their written statement. Hence, Government authorities do not appear to be proceeding diligently in the matter. In such circumstances, the real controversy in the matter may not be resolved, without presence of the third party. Even though third party is not a necessary party, but he is very well proper party whose presence would be effective for proper disposal of the suit on merits. There is no prejudice to the plaintiff, if third party is brought on the record.

6. The plaintiff has ample opportunity to lead evidence in support of his case. The application has been filed diligently. The trial has yet not commenced. Hence, in such circumstances, the amendment should be considered liberally. As far as the plaintiff being dominus litus is concerned, the said principle is not bar to join any necessary, or proper party in the matter. Especially, considering the allegations and the reason for cancellation of allotment being double allotment of land in favour of the plaintiff by fraudulently means, it is appropriate that the person due to whose complaint said proceedings were initiated should be joined as a proper party. It becomes more necessary under circumstances, when the Government authorities are not coming to contest the matter positively. Hence, following order is passed.

ORDER

1. The application is allowed.
2. The plaintiff shall carry out amendment to add third party as the defendant in the matter.
3. The third party shall thereafter appear suo motu in the matter.
4. The plaintiff is at liberty to carry out consequential amendment if necessary, in view of addition of the proposed defendant.

Pandharpur
Date:-13.10.2021

Sd/-
(M.R.Jadhav)
Civil Judge Senior Division,
Pandharpur

CERTIFICATE

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

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date 13-10-2021

Order/Judgment signed
by the Presiding Officer on : 13-10-2021

Order uploaded on : 13-10-2021