

COMMON ORDER BELOW EXH.67 & 73 IN
REGULAR CIVIL SUIT NO.858/2010

(Rajendra Shelke Vs. Shiladevi Bhange & Ors;)

1. These are the applications by third parties to add them as defendants in the present suit.

2. According to them, the plaintiff has filed present suit for perpetual and mandatory injunction. The plaintiff has filed application at Exh.5 against defendants for restraining alleged obstruction of Eastern side disputed road. He has obtained injunction order against the defendants in which present applicants were not parties. On 16.01.2020, when the present applicants were working in the suit property, the plaintiff restrained them and stated that, he is going to make new road in the suit property with the help of police aid. At that time, the present applicants came to know about the suit pending before the Court. The plaintiff has get executed sale deed dtd.06.02.2007 from defendant No.1, back and behind of the present applicants. If the applicants are not added as defendants in the suit, it will cause irreparable loss of them. Hence, they prayed to add them as defendants No.8 to 11 in the present suit.

3. The plaintiff has resisted the application by filing say at Exh.77 and 79. According to him, he has filed present suit regarding block No.195/1A/1 ad-measuring 0-70 R and block No.195/2A ad-measuring 0-50 R, which is purchased by registered sale deeds dtd.06.02.2007. The said sale deeds are mutated in the record of rights by M.E. No.1400 and 1401. Defendants were obstructing Eastern side South-North approach road from block No.176/3, 190, 193/1/1, 193/1/2 and 195/3A proceeding towards purchased property. He has

filed injunction application in the suit which was allowed. Thereafter, defendants had filed Misc.Civil Appeal No.40/2016 which is also dismissed. Lastly, defendants filed W.P. No.3855/2019 before Hon'ble Bombay High Court which is also dismissed as withdrawn. Now, the plaintiff has filed application for police aid to execute the order passed below Exh.5. That application is pending before the Court. However, in order to defeat the rights of plaintiff, the present third parties filed frivolous application to prolong the proceeding of the suit. The present applicants are not concerned with approach road mentioned in para 1-C of the plaint. Ultimately, he has prayed to reject the application with costs.

4. Heard both the sides at length. Perused the applications, say and relevant documents on record.

5. The plaintiff has filed present suit for permanent and mandatory injunction. He has purchased suit property bearing block No.195/1A/1 ad-measuring 0-70 R and block No.195/2A ad-measuring 0-50 R by registered sale deeds dtd.06.02.2007 from the defendants. Both the sale deeds also disclose that the disputed road which runs towards Eastern side of block No.176/3, 193/1/1, 193/1/2 and 195/3A was given in favour of plaintiff to approach Government road. The plaintiff had filed injunction application against defendants which was allowed on 21.10.2016. The defendants are directed to remove the obstruction and clear the suit way as mentioned above. Admittedly, said order was challenged before Hon'ble District Court and Hon'ble High Court. However, the order passed below Exh.5 is maintained in favour of the plaintiff. The record shows that in order to execute said order the plaintiff has filed application for police aid which is pending for hearing.

6. It is the contention of third parties that they are the legal heirs of one Mukund Sitaram Bhange. In support of this contention they have filed extract of M.E. No.997 at Exh.92. It shows that defendant No.3 Shaligram, defendant No.4 Chandrakant, defendant No.7 Sahebrao and present applicants Shantabai, Vijaya, Kaushalya are the legal heirs of deceased Mukund Bhange. It means that according to the third parties they have right, title, interest in the suit property along with their brothers. However, they were not parties to the registered sale deeds dtd.06.02.2007. The plaintiff has got right in the suit property by way of said sale deeds. Therefore, the plaintiff cannot enjoy the alleged road in absence of consent by the third parties.

7. Admittedly, the said sale deeds are executed in the year 2007 and the plaintiff has filed the suit in the year 2010. Third party applicants are claiming their rights in the suit property and praying to add them as a party to the suit. It means that indirectly they are challenging the sale deeds executed in favour of plaintiff. The plaintiff has filed suit for injunction against those defendants who are obstructing his peaceful possession and restraining the use of alleged road. It is not the contention of the plaintiff that the present third party applicants are obstructing and according to him they are the necessary parties. Order 1 Rule 9 of Code of Civil Procedure, 1908 speaks that, *"No suit shall be defeated by reason of the mis-joinder or non joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Provided that, nothing in this rule shall apply to non joinder of a necessary party"*. As per the contention of plaintiff the present applicants are not necessary parties. The plaintiff is master of his suit. He can add the parties to the suit who are necessary for adjudication of suit. As mentioned above the suit is pending before the Court since 2010 and

now in 2020 the third parties have filed the present applications and indirectly challenging the sale deeds dtd.06.02.2007. The present applicants have another alternative remedy which they have not availed till today. In injunction suit the plaintiff can file suit against the parties who are causing obstructions to him. The present third parties are trying to say that they are obstructing to the rights of plaintiff and they may be added as parties to the suit. In such circumstances, there is no force in the contentions of the third parties. Their applications are liable to be rejected. Hence, I pass the following order.

ORDER

1. Applications Exh.67 and 73 are rejected.
2. No order as to costs.

Malshiras
Date :- 12-8-2021

(G.M.Nadaf)
Jt.Civil Judge J.D. Malshiras