

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION,**KARAD AT :KARAD**

(Presided over by : Sabina A. Malik)

R.C.S. No. 31/1997**Order Below Exh.163****CNR No. MHST05-000031-1997**

Babutai More

--- Plaintiff

Vs.

Balaso Patil & ors...

--- Defendants

ORDER BELOW EXH.163

1) Application is preferred on behalf of third party through his power of attorney.

2) It is submitted that the plaintiff has filed the suit for declaration that she has become owner of the suit property by succession and by Will. The suit property was the ancestral property of the plaintiff's mother Krishnabai Keshav Patil and uncle Raghunath Dnyanu Nalavade. After the death of the plaintiff's mother, the plaintiff has remained in the unobstructed possession. After the death of the plaintiff's mother, civil proceedings and revenue proceedings are pending about the ownership and entries with regards to the suit property. It is stated that the defendant no.1 being the power of attorney holder of the plaintiff and the others decided to sell survey no. 190 admeasuring 23 acre 11R to this third party on 24/5/1993 for Rs. 1 crore 40 lacs for financial requirements and expenses of the suits and the cases with regards to the suit

property. Accordingly, on 24/05/1993 he accepted earnest money of Rs. 25,000/- by cheque bearing no. 41/031 on account bearing no. 593 drawn on Canara Bank, Satara and gave the earnest money receipt in presence of two witnesses. The defendant no.1, the power of attorney holder of the plaintiff further gave power of attorney to this third party to convert the land to non-agricultural, make plots and sell them. A lot of expense has been incurred by the third party to get the necessary government sanctions and for development of survey no. 190. So also, expenses were incurred in confronting the police cases and civil suits. The third party has helped the plaintiff. He has given Rs. 20 lacs, time to time to the plaintiff. The plaintiff and the defendants are aware about the transactions of the third party in concern with the suit property. In spite of repeated demands, the plaintiff and the defendant no.1 did not execute the sale-deed by receiving the remaining amount. On the contrary, with the intention to side track the third party, the plaintiff and the defendant no.1 created obstruction and filed this suit. The defendant no.1 preferred application below Exh.94 and misled the Court and obtained order on 18/4/2011 not to transfer the suit property. In fact, the defendant no.1 as the power of attorney of the plaintiff issued the earnest receipt on behalf of the plaintiff. He gave the power of attorney and development agreement in favour of the third party on basis of which the third party incurred heavy expenses.

3) It is submitted if the third party is added as party to the suit, no loss would be caused. However, if he is not added as party to the suit, he will suffer irreparable loss. If he is added as party to the suit, it would help the Court to arrive at the just decision. Hence, it is prayed that the third party be added party to the suit and

orders be given to the plaintiff and the defendant no.1 to execute sale-deed in favour of the third party for survey no. 190 of Jakhinwadi, Tal.Karad, Dist. Satata.

4) The defendant no.1 has filed reply at Exh. 164, wherein all the contentions of the third party are denied. It is submitted that the application and the relief claimed are beyond limitation. The third party does not have any right to file this application.

5) On the basis of the pleadings and the documents filed on record, following points arise for determination and findings recorded thereon with reasons are as under :-

Sr.No.	POINTS	FINDINGS
1.	Does the third party show that he is proper and necessary party to the suit ?	... In the negative
2.	What order?	... As per final order.

REASONS

AS TO POINT NO.1 :-

6) This suit is of 1997 for declaration that the plaintiff has become the owner of the suit premises by inheritance and by Will. It is not as yet reached the stage of hearing. On one pretext or the other, different applications have been made and the matter has been pending without issues being framed. The plaintiff has yet to prove her title by the Will of late Raghunath. When the name of the plaintiff have not yet been entered in the

record of right, the transaction with regards to the suit property with the third party looks fishy. Even otherwise if the development agreement and the power of attorney was given to the third party in 1993, the third party has preferred this application in this suit in 2019 i.e. about 26 years. The third party could have filed separate suit to establish his right to get the sale-deed executed. If the application is allowed, the matter which is pending since 1997 would get further complicated, the prayer of the third party for direction to execute the sale-deed does not fall in line with present suit of declaration of ownership of the suit property. The relief claimed by the third party is beyond the limitation. No case made out that the third party was not aware of the present suit as the third party has himself stated that he was financing the plaintiff for the Court matters with regards the suit property.

7) The third party has shown no connection with the relief that the plaintiff is seeking in the plaint. The third party's presence before the Court is not necessary in order to enable the Court to effectively and completely adjudicate upon and settle the questions involved in the suit. Hence, the third party is not entitled nor necessary party for the just decision in the suit. Hence, I answer point no.1 in the negative.

AS TO POINT NO. 2 :-

8) In consonance with the discussions herein above, point no.2 is answered as per the final order.

ORDER

1} Application is rejected with costs.

Karad

(Sabina A. Malik)

Date :14th Jan., 2020

C ivil Judge Sr.Dn., Karad