

Order below Exh.25 in RCS No.324/2017**CNR No. MHST060012012017**

1. This application is made by defendants to implead Government of Maharashtra as party in the suit.

2. Read say of Ld. Advocate for the plaintiff filed below Exh.26.

3. Ld. Advocate for the defendants argued that it is admitted fact that original owner of the suit property is Government of Maharashtra and plaintiff is claiming relief of recovery of possession and mandatory injunction. He argued that it is defence of defendants that as per their written statement that plot No.15 was allotted to them by the revenue authority and prior to them it was allotted to plaintiff, but, plaintiff failed to construct the house within two years from the date of allotment, therefore, Division Officer Phaltan had issued notice to predecessor in title of plaintiff Bhiwa Awate for cancellation of allotment. He relied on the document filed below Exh.29/1 of Sub-divisional officer of issuance of notice to Bhiwa Awati, thus, he prayed to allow the application.

4. Per contra, Ld. Advocate for the plaintiff argued that it is not case of the plaintiff that Government of Maharashtra ejected plaintiff from the plot No.15, but it is a specific pleading of plaintiff that said plot was allotted to predecessor in title of the plaintiff by the Government of Maharashtra and plaintiff was residing in Mumbai for his livelihood and by taking benefit of it, defendants and their father made illegal construction over the plot No.15, thus, no grievance of

plaintiff is against the Government of Maharashtra, but it is only against the defendants, who had illegally constructed on plot No.15, which was allotted to plaintiff, thus, she prayed to reject the application. Even Ld. Advocate for the plaintiff relief on xerox copies of some documents.

5. It is settled principle of law that plaintiff is a “Dominus-litis” and not bound to sue every possible adverse claimant in the same suit. Moreover, plaintiff cannot be compelled to fight against the person, whom he does not wish to fight and against whom he does not claim any relief, because, plaintiff is the master of suit. While adding any party in the suit, definitely Court is bound to take in the account wishes of plaintiff before adding the third-person as a defendant to his suit.

6. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of questions involved; that would make him only a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved. The only reasons which makes it necessary to make a person a party whose interest can be affected. In other words, it can be said that a person is necessary party whose legal rights and interest are liable to be affected.

07. On above settled legal principles, this application needs to decide. Thus, it necessary to see whether Government of Maharashtra is a necessary party in the present suit.

08. For that purpose, I have gone through the pleading of plaintiff where it has been specifically pleaded by the plaintiff that predecessor in title of plaintiff received property from the Government of Maharashtra, but plaintiff was residing in Mumbai for livelihood, hence, by taking undue advantage of it, defendants made construction on plot No.15. It is a defence of defendants that they received plot No.15 from the revenue authority and plaintiff was issued notice by Sub-divisional Officer, Phaltan for cancellation of allotment of plot.

09. Nowhere plaintiff pleaded that the Government of Maharashtra had dispossessed him from the suit property. It is a specific case of plaintiff that defendants made illegal construction on the plot which was allotted to him by the Government of Maharashtra. Thus, it becomes clear that plaintiff has not any grievance against the Government of Maharashtra. Merely because defendants have taken defence that they have been allotted plot by the revenue authority, hence, Government of Maharashtra cannot be said to be necessary party, although, it may be considered necessary witness.

10. Even, from the another angle, it is assumed that Government of Maharashtra is necessary party and it is not impleaded then only the plaintiff will face its consequences. As already stated that plaintiff is the master of his own suit, thus, he cannot be compelled to fight against the person, against whom he does not have any grievance, thus, on conspectus of above discussion, this application is liable to be rejected. Accordingly, I pass the following order:

ORDER

Application Exh.25 stands rejected.

Date: 12.02.2020
Dahiwadi

(R. R. Thorat)
Jt. Civil Judge Jr. Div, Dahiwadi.