



	<u>R.C.S. No. 108/2021.</u> Avinash Vs. Kiran and others <u>CNR No. MHST090007442021</u>
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Order Below Exh. 16.

1. This is an application filed by the Intervenor namely Indubai Bhikoba Chavan to implead her as a party to suit as per Order 1 Rule 10 of the Code of the Civil Procedure.
2. It is contention of Intervenor that, plaintiff has filed the instant suit regarding the land situated in Revision Survey no. 102 admeasuring 1 hector 4 R out of which 12 Aane share situated at Mauje Padali Station Tal. Koregaon. The above property is ancestral property of Intervenor and there is no partition by meats and bounds. Regarding the partition Intervenor had filed suit bearing R.C.S. No. 192/2010 for partition and separate possession. In the said suit temporary injunction was granted in favour of plaintiff which was confirmed till Hon'ble High Court. The plaintiff has suppressed all this material facts.
3. It is further contention of Intervenor that, the plaintiff has intentionally avoided to add Intervenor in the suit. The presence of Intervenor is necessary for effective and complete adjudication of the suit. Intervenor has share in the suit property. Intervenor has never relinquished her share in the suit property. Intervenor has filed Regular Civil Appeal No. 251/2019 against the judgment passed in R.C.S. No. 192/2010. The plaintiff was and is not in the

possession of the suit property. On the contrary Intervenor is in the common possession of the suit property. Considering all this aspects Intervenor prayed to implead her as a party to this suit.

4. The plaintiff resisted the application by filing say at Exh. 21 and contended that, the application filed by the plaintiff is false and bogus. The plaintiff has denied all the contentions made in the application. It is contention of plaintiff that he is owner of the suit property and cultivating the suit property. The suit filed by Intervenor Indubai bearing R.C.S. No. 192/2010 is dismissed. The appeal against the said judgment is pending before Hon'ble District Court, Satara. The plaintiff has filed the instant suit for perpetual injunction. The presence of Indubai Chavan is not necessary for effective adjudication of dispute. Hence, plaintiff prayed to reject the application.

5. Perused the application, say filed by the plaintiff. Heard both parties at length.

6. As per Order 1 Rule 10 of the Code of Civil Procedure the court may at any stage of the proceeding order that, name of a person may be joined in the suit whose presence is necessary for effective and complete adjudication of the suit and to settled all the questions involve in the suit. Considering above provision it is necessary to see whether he presence of Intervenor Indubai Chavan is necessary for complete and effective adjudication of the suit.

7. The instant suit is filed by the plaintiff for simplicitor

injunction against the defendants. In the instant case only limited issue is involved as to whether plaintiff is in the possession of the suit property and whether defendants have caused obstruction to the possession of plaintiff. The instant suit is filed in respect of only 78 R land i.e. 12 Aane share situated in revision survey no. 102 situated at Mouje Padali. The cause of action shows that, the defendant has caused obstruction to the possession of plaintiff.

8. It is settled principle of law plaintiff is a master of his own suit. Plaintiff is dominus litus. Plaintiff has to decide against whom to litigate. In the instant case the plaintiff is not claiming obstruction at the hands of Intervenor. Therefore, presence of Intervenor not is necessary to decide the matter in controversy. Regarding the dispute of partition an appeal is pending. Hence, I am the opinion that, the present Intervenor is not necessary in the suit.

9. In the instant case the Ld. Advocate for Intervenor placed his reliance in the case of ***Amit Kumar Shaw and other Vs. Farida Khatoon (AIR 2005 SC 2209)***. In which Hon'ble Supreme Court allowed the substitution of parties. I have gone through the observation made by Hon'ble Supreme Court in the cited case. In the above case the appellant were transferee pendente lite. Therefore, they were added in the proceeding. However, in the instant case there is no such facts. In the instant case without the presence of intervenor the questions in the suit can be completely decided. Hence, the observations made in the above case is not

applicable.

10. Further Ld. Advocate for Intervenor placed his reliance of **Hirasing Saradarsing Paramar Vs. Ramkuvarbai Paramar. (2008(1)BomCR 811)**. In the instant case the daughters of plaintiff authorized the plaintiff to institute a suit. However, they were not the parties to suit. The interest of the plaintiff and the daughters were identical. Hence, Hon'ble Bombay High Court directed to add the two sisters as a co-plaintiff and decide the suit a fresh. However, in the instant case there is not such fact on record. The suit is for bare injunction. Hence, presence of intervenor is not necessary. Hence, the observations made in above case are not applicable to the case in hand.

11. Further he placed his reliance on the case of **Executive Officer Arulmigu Vs. Chandran (AIR 2017 SC 1034)**. I have gone through the observations made in the above cited case. The Hon'ble Supreme Court affirmed the finding given by Trial Court that suit is bad for non-joinder of necessary party. Further there was no issue of order 1 rule 10 of the Code of Civil Procedure before Hon'ble Supreme Court in above cited case. The facts of the above case are different from the present case. Hence, observations made by Hon'ble Court is not applicable to the case in hand.

12. Further, Ld. advocate for Intervenor placed his reliance on the case of **Shivanand Hiremat Vs. Dipak Hiremat (2011(2)MLJ 66)**. I have gone through the observations made by Hon'ble High

Court. In the cited case above the application of order 6 rule 17 was rejected by trial Court. The suit was for partition. Therefore Hon'ble Supreme Court allowed the plaintiff to implead the coparcener to the suit. However, the instant suit for simplicitor injunction. Hence, observation made by Hon'ble Bombay High Court is not applicable to the case in hand.

13. In the instant case I am of opinion that, the presence of Intervenor is not necessary for effectively and complete adjudication of the dispute because the suit is only filed for bare perpetual injunction. Further it is settled principle of law that, plaintiff cannot be force to add party against whom he does not want to fight. In the absence of intervenor effective decree can be passed. The intervenor is neither necessary party nor a proper party in the suit. Considering above aspects this application is liable to be rejected. Hence, following order.

ORDER

01. Application is rejected.

Koregaon.
Dated : 30.09.2021

(Atul B. Patil)
Jt. Civil Judge Junior Division,
Koregaon.