
ORDER BELOW EXH. 40 IN RCS NO.152/2014

1. This is an application filed under O.1 R. 10(2) of C.P.Code by one Pandurang Vithhal Suryawanshi for impleading him as a party defendant to the suit (Hereinafter the applicant is referred to as '*third party*').

2. The third party applicant has contended that, the suit property is in his possession. He is cultivating the suit property by help of the defendants. The defendants are not directly concerned with the suit property. However, in order to mislead the Court, the plaintiffs have impleaded them as party defendants to the suit.

3. The third party applicant has further contended that, he has an interest (undivided share) in the suit property by way of inheritance. Therefore, his presence is necessary before the Court in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

4. The plaintiffs have filed their reply at Exh.46. According to them, the application is not legal and true. The application is vague in nature. The applicant has not mentioned the details in respect of his alleged share. The suit is simplicitor for injunction. The plaintiffs have impleaded only the persons

who have actually caused obstruction to their possession over the suit property. In fine, according to the plaintiffs, the third party cannot be impleaded as the suit is simplicitor for injunction.

5. Heard Shri. A R. Janugade, learned Advocate for the third party applicant and Shri. H D. Patil, learned Advocate for the plaintiffs. Perused the record. Following points arise for my consideration to which I have recorded my findings with reasons thereunder.

SN.	POINTS FOR CONSIDERATION	FINDINGS
1	Whether the presence of the third party applicant is necessary in order to enable this Court to effectually and completely adjudicate upon and settle all the questions involved in the suit ?	Yes.
2	What Order ?	As per the final Order.

:-REASONS:-

6. **As to point Nos. 1 and 2** :- The suit is simplicitor for injunction. The plaintiffs have sought perpetual injunction restraining the defendants from causing obstruction to their possession over the suit property. It is asserted by the plaintiffs that ½ share out of the suit property was purchased by plaintiff No.1 from Jagubai Sampat Yadav by way of a registered sale deed dated 21/04/1993. It is further asserted

that the remaining ½ share was standing in the name of Subhadra Laxman Sawant. She had adopted the plaintiff No.2. Accordingly, an adoption deed was registered on 16/05/1990. Subhadra died on 05/04/2012. As such, the plaintiff No.2 has inherited her ½ share.

7. The defendants have resisted the suit by their written statement Exh.31. According to them, they are cultivating the suit property **on behalf** of the third party applicant. The plaintiffs have suppressed material facts from this Court. They are claiming exclusive ownership over the suit property. In fact, the third party applicant is one of the co-sharer of the suit property.

8. During the course of arguments on present application, the learned Advocate for plaintiffs submitted that the plaintiffs are in agreement with the '**genealogy**' given by defendants in para 5 of their written statement. As such, it is not disputed that the third party applicant is son of deceased Tarabai Vithhal Suryawanshi. The said Tarabai is daughter of Ramchandra Balu Sawant.

9. Mutation entry No. 1538 is produced on record by both the parties. Perusal of the said mutation entry shows that the names of **legal heirs** of Rama Bala Sawant were mutated to several landed properties. The said mutation entry further

shows that the mother of third party applicant, namely, Tarabai had also succeeded to the estate of Rama.

10. Indisputably, the suit property is ancestral property of deceased Tukaram and Ramchandra. It is asserted that the plaintiff No.1 has purchased ½ share from Jagubai who is shown as legal heir of deceased Tukaram. The plaintiff No.2 is claiming that he succeeded to the remaining ½ share after death of Subhadra (sister-in-law of Tarabai). In the backdrop of said facts and circumstances, it *prima facie* appears that, deceased Tarabai had also succeeded to the estate of deceased Rama Bala Sawant, the estate, which indisputably includes the suit property.

11. It is the main objection of plaintiffs that, the third party cannot be impleaded as the suit is simplicitor for injunction. Here useful reference can be made to the following case laws:

1) *N. Anantha Reddy Vs. Anshu Kathuria and Ors.*
MANU/SC/1268/2013.

2) *Vasavi Kanyakya Seva Trust, Ramanthapur Vs. District Collector, R.R.Dist., Hyd. and ors.*
MANU/AP/0300/2000.

12. In the case of *N.Anantha Reddy cited supra*, it was observed that,

“The object of Order-1 Rule-10 (2) of Civil Procedure Code to implead a thirty party to the suit is that the dispute in the suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings. It was also observed that it is not necessary that a relief should be sought against the proposed party”.

13. In the case of *Vasavi Kanayaka Seva Trust* cited *supra*, a decision of Hon'ble Division Bench in the case of *Khaja Abdul* was referred. It was observed therein that,

*“The crucial test for the addition or otherwise of a particular party as defendant or plaintiff is whether the presence of such party is necessary or at least proper without whom there can be no effective and final adjudication of all issues involved in the suit with regard to the same subject matter. The intendment and object of the provision as could be gathered from the language used therein appears to us to adopt a liberal construction to enable the Court to determine all the questions relating to the subject matter of the suit arising not only between the parties to the suit, but once and for all in the presence of **all those parties** whose presence is necessary or proper for an effective and final adjudication”.*

14. In the case of *Vasavi Kanayaka Seva Trust*, it was held that,

“There cannot be a blanket proposition that in every suit for injunction, the parties cannot be impleaded and Order-1 Rule- 10 of C.P.C. cannot be made applicable. If the parties on either side come up with independent titles and claims, it cannot be said that the scope of the inquiry is as narrow as to treat the suit as one for simplicitor injunction but certainly

gets widen to embark upon the question of title”.

15. In the present case at hand, as discussed above, the defendants have disputed the claim of exclusive ownership of plaintiffs. They have **specifically** pleaded that they are cultivating the suit property on behalf of the third party applicant. As discussed above, the deceased mother of third party applicant had **succeeded** to the estate of deceased Rama (M.E.No.1538). On that basis, the third party applicant is claiming interest (undivided share) in the suit property. In the said facts and circumstances, the alleged title of plaintiffs has come under clouds of doubt. Therefore, the presence of third party applicant is necessary in order to enable this Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. It will certainly avoid further complications and multiplicity of proceedings. Hence, the point No.1 is answered in affirmative and in answer to point No.2 the following Order is passed.

ORDER

1. Application Exhibit. 40 is allowed.
2. The third party Pandurang Vithhal Suryawanshi be impleaded as a party defendant to the suit.
3. The plaintiffs to carry necessary amendment in the title of the suit.

Date : 21/10/2015.

(M V.Phade)
Jt. Civil Judge, J.D., Patan.