

ORDER BELOW EXH.27 IN Reg. Dar. No. 85/2012Nanda Mohite Vs. Hari Mohite

1. This is an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) by the third parties viz. Bhagubai Ramchandra Gaikwad, Indubai Mariba Jagtap, Laxmibai Shankar More, Gorabai Dajirao jagtap and Kesharbai Pralhad Salve (applicants).

2. According to the applicants, the suit property Gat No.102 of mouje Surawadi was originally belonged to Hari Dagadu Mohite and Shantabai Hari Mohite. In fact, the aforesaid suit property came to be acquired for the purpose of Lonand-Phaltan railway line. The remaining land is owned and possessed by the applicants. Accordingly, the Mutation Entry No.2162 has been sanctioned. Hence, the applicants may kindly be allowed to be impleaded as third parties in this proceedings.

3. The D.H. objected the application on the ground that, the applicants have no concern with the suit property. The present D.H. is having a decree of specific performance against the J.D. Haribhau Dagadu Mohite and the said mutation entry is false and bogus. Hence the application may kindly be rejected.

4. On the basis of aforesaid pleadings, following points do arise for my consideration. The finding against each point is recorded with reasons thereof.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Are the applicants entitled to be impleaded as third parties in this proceedings ?	No.
2	What order ?	Application is rejected.

REASONS

5. Heard the learned Advocates for both the sides. They argued in consonance with their pleadings.

6. Perused the entire record.

7. **It is not in dispute :-**

- a) the D.H. is having a decree of specific performance in respect of suit property bearing Gat No.102.

As to points No.1 and 2 :-

8. The sole mutation entry No.2162 (Exh.31/1) relied by the applicants reveals that, the applicants are the heirs of Dagadu Chokhu Mohite along with J.D.No.1 namely Hari Dagadu Mahar. It is pertinent to note that, the aforesaid revenue record does not reveal the number of suit property i.e. Gat No.102. Therefore, it is difficult to accept the contention of the applicants that, the suit property has fallen on them after the death of Hari Dagadu Mahar.

9. On the other hand, the 7/12 extract filed by the D.H. at Exh.38 reveals that, the J.D.No.1 Hari Dagadu Mohite and Shantabai Hari Mohite are owner and possessor of the suit property. Therefore, the contention of the applicants is not supported with cogent evidence. Moreover, a party cannot be added under Order I Rule 10 of CPC in an execution proceedings for the reason that, such a party may have a remedy under section 47 or Order XXI Rule 97 of CPC. Therefore, the application fails and deserves to be rejected. Accordingly, the points No.1 and 2 are answered with following order :

ORDER

The application is rejected with costs.

Phaltan

Date:- 08/02/2016

(I. M. Naikwadi)

Jt.Civil Judge Jr. Dn. Phaltan.