

Regular Civil Suit No. 88 of 2017
Dattatray Vs. Mangal & ors.

Order Below Exhibit 60
(Passed on 23rd November, 2022)

This is an application filed by defendant No.1 for deletion of the names of defendant No.2 & 3 vide provisions under Order I Rule 10 of the Code of Civil Procedure, 1908.

2. It has been contended by defendant No. 1 that originally deceased Maruti Rama Garde was defendant No.1. He died on 24.11.2020. His daughter Smt. Mangal Bhagwan Bhujbal is his only legal heir. Therefore, she has been brought on record as the defendant No.1 being his only daughter in accordance with the provision under Order XXII Rule 4 of the Code of Civil Procedure. The plaintiff has filed the present suit for simplicitor possession. Smt. Mangal has filed her written statement and denied the suit. Defendant No.2 & 3 have no concern with the suit property. Already, probate application filed by them before the Hon'ble Civil Judge Senior Division, Satara is pending. Therefore, unless and until it is finally decided, they can not be permitted to act as the defendants in present suit. Defendant No.2 & 3 are intending to grab the suit property by taking undue advantage of forged and bogus "Will", allegedly executed by said Maruti Garde. In fact, said Maruti did never execute any such document in their favour. Defendant No.1 is in possession of the suit property. Therefore, defendant No.2 & 3 have been wrongly added in the suit as a party. By such addition, it causes unnecessary complication in the suit. The real controversy is between plaintiff and defendant No.1.

Therefore, it can be decided on merit and effective decree can be passed. For which, the defendant No.2 & 3 are not necessary party. Therefore, she prayed for deletion of their names in the suit by allowing the present application.

3. The plaintiff filed his say below the application and submitted to pass necessary order.

4. Defendant No.2 & 3 also filed their reply at Exh.62. They resisted the application by contending that said application has been filed by defendant No.1 in collusion with the plaintiff. She is trying to cause obstruction in the legal proceeding by filing such false applications. The probate application and the present suit are different proceedings. Therefore, the necessary documents are to be proved in them, separately. Defendant No.1 is having grudge for them, because deceased Maruti executed "Will" in favour of them. Already, they are added as a necessary party to the suit being legal representatives of deceased Maruti. In fact, the plaintiff has nothing to say and kept mum. Defendant No.1 is trying to prolong the matter by filing such false applications. They are in possession of the suit property by virtue of the "Will". Therefore, they prayed to reject the application.

5. Heard Ld. Advocate Mr. U.H. Sanas for the defendant No.1 and Learned Advocate Mr. A.K. Shinde for defendant No. 2 and 3. Mr. Sanas argued that this is a simplicitor suit for possession and defendant No. 2 and 3 are nowhere concerned with the prayer in it. They have been brought on record afterwards. Already, the

issue of title has been decided in appeal and order of the Hon'ble First Appellate Court is final, as it has not been challenged. Deceased Maruti (original defendant No.1) filed Special Civil Suit No. 40 of 2017. The defendant No. 2 and 3 suppressed the fact of pendency of probate application filed by them. Said application was filed in the year 2021 and the issues were amended in the present suit on 18th January 2022. Therefore, the provisions of section 10 of the Code of Civil Procedure are also applicable to the present suit and it has to be stayed. The scope of present suit is very limited. Further, he argued that the defendant No. 2 and 3 are not necessary party to the suit. Defendant No.1 is in possession of the suit property. Therefore, the names of defendant No.2 & 3 be deleted.

6. Learned Advocate Mr. S.B. Chavan for the plaintiff argued that the proceeding of present suit should not be stopped because of pendency of the probate application. Said probate application will necessarily take certain time to get finally decided.

7. Learned Advocate Mr A.K. Shinde argued that the plaintiff is maternal uncle of defendant No.1. The defendant No. 2 and 3 are cousins of defendant No.1. The defendant No. 2 and 3 are in possession of the suit property since 1962. There is no interruption to their possession. The Special Civil Suit No. 40 of 2017 has been abated due to the death of Mr. Maruti Garde. Thereafter, the probate application was filed. The defendant No.1 did not adduce any evidence. Therefore, her evidence side was closed. Thereafter, defendant No. 2 and 3 led their evidence. The

conduct of defendant No.1 should be taken on record. Further, he argued that defendant No.1 and plaintiff are in collusion. Defendant No.1 does not require the suit property. In fact, she is not in its possession. The defendant No.2 and 3 are legal representatives of deceased Maruti by virtue of the "Will" (Exh.57) executed by him in their favour. The defendant No.1 has no right to file said application, as she did not lead any evidence in support of her defence. The probate application filed by defendant No.2 and 3 is only for the certification and it was not necessary for them to file it. The present application has been filed only to harass defendant No.2 and 3 and to prolong the matter. Therefore, it be rejected.

8. Perused the record and say filed by defendant No.2 and 3 as well as the plaintiff. I also perused the entire record. It appears that defendant No.2 & 3 have been added as a party to the suit vide order dtd. 26.03.2021 passed below application (Exh.35). Importantly, said application was replied by the plaintiff and he submitted to pass necessary order. I also perused said order, wherein it has been clearly mentioned that defendant No.2 & 3 are necessary party to the suit as they are claiming to represent the estate of deceased Maruti by virtue of "Will", allegedly executed by him.

9. It is further pertinent to mention that after their impleadment as a party to the suit, defendant No.2 & 3 adduced their evidence and examined three witnesses. The present application has been filed, afterwards. Importantly, an issue

regarding their possession over the suit property has been framed. This is a suit for possession and the plaintiff is claiming the same. As defendant No.2 & 3 are firmly claiming to be in possession of the same, they are necessary party to the suit for proper adjudication of the suit on merit. Importantly, the application (Exh.35) was not specifically objected by the plaintiff, himself. On the other hand, the plaintiff submitted that due to pendency of probate application, this proceeding should not get affected. It is pertinent to mention that mere pendency of probate application filed by them will not create any hurdle for their status in the present suit.

10. With regard to the objection raised by defendant No.1 in respect of the bar u/sec. 10 of the Code of Civil Procedure, it has to be mentioned that said provision is in respect of the previously instituted suit and the probate application can not be termed as the suit. In view of this discussion, the present application is liable to be rejected. Hence, the following order.

ORDER

1. The application (Exh.60) is hereby rejected.
2. Cost in main cause.

Dictated & pronounced in open Court.

Wai.
Date : 23.11.2022.

(R.M. Bhende)
Jt. Civil Judge Junior Division,
Wai, District Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 23.11.2022.

Order checked and signed on : 23.11.2022.

Uploaded by : S. S. Kumbhar.

Stenographer (Grade-III)

Uploaded on : 29.11.2022.