

ORDER BELOW EXH.22

(Passed on 10/02/2021)

[CNR No. MHWS07-000555-2020]

1]. This an application filed by the applicant Mohammad Rizwan Mohammad Shafi Punjani under Order-1 Rule 10 read with section 151 of the C.P.C. for adding him as a defendant.

2]. It is submitted by him that the plaintiff has filed suit for declaration and permanent injunction thereby prayed for restraining the defendants from selling the suit field or alienation thereof. However, the defendants have executed an agreement for sale in respect of Gut No. 12 ad-measuring 2 H. 43 R. out of which 3/4th share ad-measuring 1 H. 85 R. alongwith Pot-Kharab land situated at village Bhilkheda, Tq. Karanja dated 21/12/2019 in favour of applicant. The said agreement between the applicant and the defendants is prior to filing of the present suit. It is further submitted by the applicant that when it is clear that the defendants have executed an agreement in favour of applicant then it is clear case that the rights of the applicant are vested and created in the said property. Moreover, the present suit is filed by the plaintiffs after execution of said agreement.

3]. It is also submitted by the applicant that he has purchased the above property from the defendants for Rs.1,51,00,000/- (Rs. One Crore Fifty One lacs only) for which 05 lacs has been paid by the applicant to the defendants and same has been acknowledged by them before the witnesses.

4]. It is also submitted by the applicant that as per the cardinal rule of law "audi alterem partem" the instant applicant needs to be heard by this court before delivering or passing any order in favour or against any of the parties, because it is clear case where the rights of the applicant are vested

and already created in the property in question. Therefore, any order in favour or against any of the parties in the suit are directly affecting to the rights of the applicant. Moreover, for proper, legal and fair adjudication of the matter and for the protection of rights of the applicant. It is necessary that he be permitted to be heard. Further, joining of the applicant as a defendant will not prejudice to the rights of either party because yet trial of the suit is not started. Furthermore, either of the parties has not been pleaded in respect of the applicant and his right. It amounts to suppression of the facts. Hence, if the present application is not allowed then it will cause irreparable loss to the applicant and multiplicity of the proceeding. Therefore, the applicant prayed for allowing the present application.

5]. In pursuance to the said application say of the plaintiffs and the defendants was called. Accordingly, they have filed their say.

6]. The plaintiffs filed their reply vide Exh.27 and strongly opposed the present application. The plaintiffs submitted that in the suit they have also prayed that defendant No. 1 and 2 have no rights in the suit field as both of them have already relinquished their share in favour of the plaintiffs by executing registered document of relinquishment. Therefore, the declaration is also sought by the plaintiffs and therefore when the plaintiffs came to know that defendants are trying to sale out the suit field and the purchaser started to enquire with the plaintiffs about the position of the plaintiffs. On 10/02/2020 one purchaser gave threat on phone that he is going to purchase 3/4th shares in the suit field and will enter the tractor in the suit field then and then only the plaintiffs are constrained to file the present suit for permanent injunction and declaration against the defendants.

7]. It is also submitted by the plaintiff that suit is only against the defendant those are made party to the suit and they are only necessary and proper party to the suit and nobody else is necessary or proper party to the suit than them. Further, the applicant has another an efficacious remedy against the defendants if he is coming with a case that he has entered into an agreement with the defendants for the purchase of the suit field from them. Further, he can proceed against them as per law. Therefore, the applicant can not be permitted to be pleaded in the suit as he is not proper or necessary party in the present suit because as stated earlier this suit is only between co-sharers. It is further submitted by the plaintiff that the suit field is yet not partition and it is joint property. Therefore, unless and until there is a valid partition by mets and bounds between legal claimants no sale-deed can be affected of the suit field by anybody including the plaintiffs. Moreover, when the applicant who is going to allege that he has entered into an agreement for the purchase of suit field of the undivided sale from the defendants, it will certainly cause prejudice to the plaintiffs. Therefore, the application filed by the applicant is not tenable and liable to be rejected with cost. Hence, the plaintiff prayed for rejection of the application.

8]. The defendants have also filed their say to the present application vide Exh.26. The defendants submitted that the present application is not tenable and the applicant has no right or locus standi to file the present application. Moreover, applicant is not necessary party in the present suit. Further, the applicant has no concern with the dispute between the plaintiffs and defendants. Therefore, there is no need to join the applicant as defendant in the suit. Hence, the defendant prayed for rejection of the application. However, interestingly advocate for the defendant No. 3

Shri. Gujjar has filed an application Exh. 30 as reply to the present application. Through the said application learned advocate for the defendant No. 3 has admitted application (Exh.22) and agreement dated 21/12/2019. Hence, he submitted that the applicant is necessary party in the present suit. However, he has not pressed the said application on 14/09/2020. Thereafter, learned advocate for the defendant N. 3 filed another application Exh.31 for restoring application Exh. 30 which he has not pressed on the ground that he has not pressed the said application inadvertently. The said application Exh. 31 was rejected by this court on merits.

9]. Perused the application and say filed by the parties. Heard learned advocate for the applicant Shri. J. M. Khan, learned advocate for the plaintiffs Shri. R.S. Joharapurkar and learned advocate for the defendants Shri. Gujjar and K.W. Ingole. They have argued on the line of their application and say.

10]. Before going into merits of the application it is necessary to consider the relevant legal provision of Order I Rule 10 (2) of the C.P.C which provides as under: -

(2) Court may strike out or add parties.- *The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

11]. In short, the court is given the discretion to add as a party, any person who is found to be a necessary or proper party. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

12]. Admittedly, the present suit is filed by the plaintiffs for declaration and permanent injunction. Moreover, the alleged agreement to sale dated 21/12/2019 was executed prior to filing of the present suit. However, it is important to note here that through the said suit the plaintiff prayed for restraining the defendants from selling the suit field unless the same is partition by mets and bounds and the legal share of everybody came to be fixed and for restraining the defendants from creating any third party interest. Further, for declaration that the defendant No.1 and 2 (2-A to 2-E) have remained no legal right or interest in the suit filed after executing relinquishment deed by them. The same is binding on them.

13]. It is pertinent to note here that according to Order-1 Rule 10 (2) of the C.P.C., the court may add parties as a plaintiff or defendant at any stage of the proceeding if it is appeared to the court to be just to add the name of any person who ought to have been joined as a plaintiff or defendant, or whose presence before the court may be necessary in order to

enable the court effectually and completely to adjudicate upon and settled all the questions involved in the suit. In the present matter, it has to be seen that whether presence of third party is necessary, in order to enable the court effectually and completely to adjudicate upon and settled all the question involved in the suit for grant of reliefs as claimed by the plaintiffs.

14]. In the present case, the question involved means a question between the plaintiffs and the defendants and not a question raised by the third party. The question involved between the plaintiffs and the defendants is that whether the defendants have relinquished their shares by executing relinquishment deed infavor of plaintiff Gopal and whether the plaintiffs are entitled for the relief of declaration and permanent injunction as prayed. So, considering the above said questions, I find that the presence of third party (applicant) is not necessary before the court in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the suit. Further, effective decree can be passed in absence of the applicant. Therefore, considering the above legal and factual aspect I am of the view that the applicant is neither necessary nor proper party in the suit. Thus, the present application is having no merits. Hence, I pass the following order.

ORDER

- 1) The application (Exh. 22) is hereby rejected.
- 2) No order as to costs.

Date : - 10/02/2021
Karanja.

Civil Judge, J.D. Karanja (Lad),
District-Washim.

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R.C.S. No.05/2020

Gopal Jadhav Vrs. Ratnamala & Others.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/
Order are same word to word as per the original order.

Name of Steno. :- N.L. Jamnik (Steno-L.G.)

Court Name :- Civil Judge (Jr.Dn.) and J.M.F.C.,
Karanja. Dist. Washim.

Date :- 10/02/2021

Order signed by the :- 10/02/2021
presiding officer on

Order uploaded on :- 10/02/2021