

Spl.C.S.No.24/2017
Syd.Burhan..Vs..The Principal
Secretary Forest.

ORDER BELOW EXH.12

(Date : 07th April 2018)

Defendant no.4- Executive Engineer, Yavatmal Project Construction Division, Yavatmal filed this application under Order 7, Rule 11 of The Code of Civil Procedure, 1908 (the Code) seeking rejection of the plaint on the pretext that there is no cause of action against him, he is neither necessary nor proper party to the suit.

2) Perused reply of the plaintiff at Exh.15. Heard the learned counsel for the plaintiff Shri. Pimpalkhare. None present for defendant no.4.

3) The plaintiff denies the absence of cause of action against defendant no.4. It is stated that defendant no.4 accepted the plaintiffs bid for cutting and lifting of the trees from the submergence area of Mahadapure dam. It is also stated that the tender was also issued by defendant no.4 and he accepted plaintiffs bid for Rs.9,00,000/-. For such reason as the per the learned counsel for the plaintiff the submission that there is no cause of action against defendant no.4 is devoid of merits.

4) Order 7, Rule 11 of the Code contemplates the circumstances in which the plaint can be rejected. Misjoinder of party is not one of the reason for which the plaint could be rejected. However, the non disclosure of cause of action is one of the ground on which the plaint can be rejected. But the cause of action for the suit is disclosed in the plaint.

5) As seen from the prayer clause whatever reliefs the plaintiff is seeking is against defendant nos.1 to 3, who are the Government officials representing the Forest Department. Any person can be made the defendant if he is either necessary or proper party. No relief is sought against defendant no.4 and therefore, he can not be termed as necessary party. The plaintiff filed the copy of his agreement with defendant no.4 vide list (Exh.3/5). It is submitted that for illegal felling of trees the offence has been registered against the plaintiff and other office bearers. The defendants took the plea that whatever financial loss the plaintiff suffered, is because of his inaction. However, the learned counsel for the plaintiff submitted that in absence of the necessary paper compliance from the defendants, the plaintiff was not in a position to get necessary clearances. Under these circumstances, what were the terms and conditions in the agreement between the parties and breach of those conditions would be point of contention in the suit. For such reason, defendant no.4 being signatory to an agreement with the plaintiff, is proper party.

In the light of aforesaid discussion, I find the instant application is devoid of merits. Consequently, the application is rejected.

Kelapur

Date : 07-04-2018.

(Y.K. Rahangdale)
Civil Judge (Sr.Dn.), Kelapur