

**ORDER BELOW EXH. 01 IN R.C.S. NO. 87/2016**

Hard Learned Advocate for the both parties.  
Perused record and proceeding.

**02]** On perusal of record, it appears that my Learned Predecessor has framed issues at Exh.34. On perusal of the issue No.02, it is found that the said issue has framed as “*It the plaintiff entitled to have partition of the suit properties? If yes, what would be the respective shares of the parties?*”. However, on careful examination of the pleadings of the plaintiff as well as the defendants, it is evident that the plaintiff has neither pleaded nor claimed any relief of partition, in the plaint. Despite absence of such pleading and prayer said issue regarding partition has been framed.

**03]** It is further noticed that the defendants No.01, 04 to 06, have specifically raised objections to the framing of the issue relating to partition and separate possession.

**04]** Similarly, on perusal of the issue No.03, it is found that the said issue has framed as “*Whether plaintiffs are entitled for separate possession of suit properties as prayed?*”. Although an issue regarding separate possession has been framed, the plaintiff has not sought any relief of separate possession, nor there is any averments in the plaint indicating the necessity for such relief. There is nothing on record to demonstrate that the plaintiff has claimed or is

entitled to the relief of separate possession.

05] Thus, from the foregoing discussion it is clear that the issue No.02 and 03 are not borne out of the pleading of the either parties and are beyond the scope of the suit. Therefore, these issues are not necessary to determine the real controversy between the parties. Therefore, in view of the aforementioned facts and circumstances on record and the provisions enshrined under Order XIV, Rule 5 of the Code of Civil Procedure, 1908, at this juncture it is necessary to strick out the issues No. 02 and 03 and recast issue No.02, framed at Exh.34, for adjudication of the suit on merits and in the interest of justice. Consequently, I pass the following order:-

**:- ORDER :-**

- 1] The issues No. 02 and 03 as originally framed at Exh.34 are hereby struck off.
- 2] The issue No.02 is recast as **“Whether the plaintiff proves that he and defendants No. 02 and 03 are entitled to declaration of 1/3rd share or any other share, as per law, in the suit property ”**
- 3] The remaining issues shall remain unchanged.
- 4] The both party at liberty to lead evidence, if any, strictly confined to the issue as recasted.

Date:- 29/01/2026.

Place:- Jamkhed.

**Sd/-**

**(Anushri B. Phand)**

Jt. Civil Judge Junior Division,  
**Jamkhed.**