

MHAU050024362015



**R.C.S. No.410/2015**

**Nivrutti & other**

**Vs.**

**Yenubai & other.**

**ORDER BELOW EXH.135**

**[Passed on : 18.11.2025]**

This is an application under Order 14 Rule 5 of the Code of Civil Procedure (for short 'C.P.C.').

2. According to the defendant nos.12 to 14, the plaintiffs filed this suit for partition of Gat no.166 situated at village Kanaksagaj, Tal. Vaijapur, Dist.Aurangabad. Besides reliefs of partition and separate possession, they also claimed perpetual injunction against present defendants. Present defendants filed their written statement on 22.03.2016 and contended that plaintiffs are trying to dispossess them from suit land forcibly. It is also alleged that plaintiffs have filed suit in collusion with defendant nos.1 to 11. It is specific contention of defendant nos.12 to 14 that suit is hopelessly barred by limitation and this Court has no jurisdiction to try and entertain this suit. It is not maintainable from any legal corner. Defendant nos.12 to 14 have further contended that they are protected tenants of suit land and issue in respect of tenancy needs to be framed. In the light of above contentions, defendant nos.12 to 14 have prayed to frame following additional issues:

- (a) Whether father of defendant no.12 namely Sakharam Buwaji Kale was protected tenant of suit land and after his death, defendant nos.12 to 14 are in possession of suit land as tenants?

- (b) Whether this Court has jurisdiction to try this suit?
- (c) Is suit maintainable in present form?
- (d) Is suit barred by law of limitation?

3. By filing their reply (Exh.136), defendant nos.1 to 11 have opposed application and asserted that contents of the application are not only false but imaginary and baseless also. On the strength of contentions raised in simplicitor written statement, proposed additional issues can not be framed. According to defendant nos.1 to 11, prayer of the application is not legally tenable or entertainable. It is further contention of the defendant nos.1 to 11 that defendant nos.12 to 14 had not claimed any relief in their written statement; therefore, on the basis of denial statements or plain denials, proposed additional issues can not be framed. In the instant matter, the plaintiffs have filed testimonial affidavits of their witness and matter is posted for cross-examination, but in order to protract trial and hearing of the matter, instant application was moved by defendant nos.12 to 14. With these contentions, defendant nos.1 to 11 have prayed to reject application with heavy cost.

4. It is significant to mention that despite opportunity given the plaintiffs, they have not filed their say/reply on the application; therefore, application is under consideration for order without say of the plaintiffs on application.

5. In view of above contentions in the light of rival submissions; following points emerge for my determination, I record my findings thereon for the reasons to follow:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether on the basis of statements made in the application and contentions of defendant nos.12 to 14 in their written statement, proposed additional issues can be framed?	.... Yes.
2.	What order ?	... Application is allowed partly.

6. I have given anxious consideration to submissions canvassed by Id. Advocates of both parties and also perused pleadings and material produced on record.

**REASONS**

**AS TO POINT NOS.1 & 2 :-**

7. On the strength of application at hand, defendant nos.12 to 14 have prayed to frame following additional issues:

- (a) Whether father of defendant no.12 was protected tenant of suit land and after his death, they are in possession of suit land by way of succession as protective tenants?
- (b) Whether this Court has jurisdiction to try this suit?
- (c) Is suit maintainable in present form?
- (d) Is suit barred by law of limitation?

8. Having regard to contentions of both parties, I deem it fit and proper to consider need and necessity to settle proposed additional issues one by one. So far as, proposed additional issues are concerned, it must be mentioned that defendant nos.12 to 14 denied plaintiff averments in their written statement filed at Exh.15. In said written statement, these defendants have denied plaintiff averments and asserted that as to how their father got possession of suit land. It does not mean that in order to oppose claim of the plaintiffs, defendant nos.12 to 14 have raised plea of protected tenancy. Suit of the plaintiffs relates to main relief of partition and separate possession. Besides said relief, they have also claimed consequential reliefs of perpetual injunction and possession. Having regard to nature of controversy between parties to the suit, I do not find it just and proper to frame additional issue regarding protected tenancy of father of the defendant nos.12 to 14 and their succession as protected tenants after death of their father.

9. Defendant nos.12 to 14 have asserted that present suit instituted by both plaintiffs is not tenable as this issue covers several legal aspects and its goes to the root of the matter; therefore, said additional issue needs to be settled. Likewise, issues of jurisdiction and limitation are legal issues and goes to the root of the matter. Furthermore, defendant nos.12 to 14 have specifically pleaded in their written statement about maintainability of suit, bar of jurisdiction and limitation. Hence, in view of this petition, legal issues can be formulated as additional issues below Exh.50. In

view of above, application deserves to be allowed partly. In the result, I proceed to pass following order:

**ORDER**

- (i) Application (Exh.135) is allowed partly.
- (ii) additional issues framed below Exh.50.

*Dictated in open Court.*

Date: 18/ 11 / 2025  
Place: Vaijapur.

**(A. B. Shaikh)**  
Civil Judge Sr. Division,  
Vaijapur.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of Order is same word to word as per the original Order.

Name of Stenographer : Anant V. Chopade,  
Stenographer Grade-II.

Court : (A. B. Shaikh) Civil Judge (S.D.), Vaijapur.

Date : 18.11.2025.

Order signed by the presiding officer on : 24.11.2025.

Order uploaded on : 24.11.2025.

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