



ORDER BELOW EXH.142

This is an application filed on behalf of third party applicant namely Shantabai w/o. Atmaram Darade for permission to add her as defendant No.10 in the title clause of plaint (Exh.1) under Order-I, Rule-10 of the Code of Civil Procedure, 1908. (Here-in-after referred in short to as "the Code").

2. According the applicant, she has 00H:62R land area in Gat No.22 and impugned way under order in question is proposed to be passing through Western side common boundary of her said land. She was not party in the proceeding initiated before the defendant/Tahsildar, by which said impugned order came to be passed. It came to be passed without giving an opportunity of being heard to her. The plaintiffs and the defendants have not given information about the impugned order to her. She came to know about the same through her another son namely Deepak Atmaram Darade. So, she wants to contest the suit by filing written statement and also willing to set-up counter claim, as well. Temporary injunction application (Exh.5) is filed against defendant No.1. However, the Court has also given an opportunity of being heard to defendant Nos.2 to 5. She will cause prejudice and sustain irreparable loss, if the said temporary injunction application is allowed. She needs to add as necessary party, for just decision of the case. Hence, she urged to allow application.

3. The plaintiffs have suo-moto filed say on leaflet itself through their learned advocate and given no objection for allowing application, on being third party applicant is also one of the affected party by virtue of impugned order.

4. Contesting defendant No.2 has opposed application by filing say at Exh.144. According to him, the contents of application are false and fabricated. He denied that, third party applicant has separate share of land area situates beside common boundary of the suit way. The applicant had given an opportunity of being heard by the defendant/Tahsildar before passing impugned order of suit way. She was a party in the said proceeding as non-applicant No.8 and represented through advocate Shri. V. V. Kure. She had also filed say in writing in the said proceeding on 07/03/2022. The copy to that effect is already placed on record alongwith list Exh.4. This third party applicant has knowledge about said proceeding including impugned order of suit way, since inception. However, the said fact is intentionally suppressed by her. She did not challenge said impugned order. The application is filed with a view to prolong the proceeding. Hence, he urged to reject application with costs.

5. Remaining defendants failed to file say on this application, though reasonable time given. Hence, the application is proceeded without say against them.

6. Heard, the learned advocates Mr. A. L. Sable, for third party applicant, Mr. B. R. Dak, for the plaintiffs and Mr. V.

S. Joshi, for defendant No.2, at length. They have argued almost all the facts, which are pleaded on behalf of their respective parties, as mentioned supra. None appeared on behalf of the remaining defendants for tendering an argument on this application, as well. On considering the nature of main suit and present application, it taken up for disposal on merit.

7. Perused application, say and record of the case, minutely. The contents of application are supported by an affidavit of the applicant viz. Shantabai w/o. Atmaram Darade vide Exh.143. Third party applicant has not placed on record any supporting documentary evidence.

8. The suit is instituted for setting aside impugned order passed by defendant No.1/Tahsildar in file No.2021/जमा-2/कावि-143 on 17/05/2022 regarding suit way given through common boundary of land Sy. Nos.10 & 17 etc. Admittedly, third party applicant is mother of plaintiff No.2. On query made by the Court to the learned advocates for third party applicant and the plaintiffs reveals that, third party applicant and plaintiff No.2 are residing in a joint family, as well. No doubt, the 7/12 extract of land Gat No.22 annexed with list Exh.4/2 shows that, 00H:62R area out of total 01H:43R land area recorded in the name of third party applicant. The remaining 00H:81R area seems to have recorded in the name of her son i.e. plaintiff no.2 out of Gat No.22. It is not the case of third party applicant that, her son plaintiff No.2 is having adverse interest against her in the subject matter of the suit. Moreover, third party applicant along with both plaintiff and six others have contested the said

impugned proceeding before defendant No.1 by filing common say in writing through advocate, as pointed out by the learned advocate for defendant No.2. The copy of said say is annexed with list Exh.4/8. Thus, it seems that, third party applicant has suppressed this material fact.

9. In view of Order-I, Rule-10 of the Code, necessary party is one without whom no order can be effectively made. Whereas, proper party is one in whose absence effective order can be made, but whose presence is necessary for complete and final decision in the case. It is well settled that, one of the family member can institute the suit for protecting legal rights and interest over self acquired or joint family property for himself and on behalf of other joint family members, except the suit for partition and separate possession. The plaintiffs have not given a single reason as to why they have not impleaded third party applicant as a defendant or otherwise.

10. It is matter of fact, the learned advocates for the plaintiffs, defendant No.2 and the learned Assistant Government Pleader have tendered argument on temporary injunction application (Exh.5), at a glance. Thereafter, the matter was adjourned at the instance of plaintiff for placing on record citations in support of an oral argument at the instance of the plaintiffs vide Exhs.138 & 139. Meantime, the present application is filed on 11/12/2025. These circumstances show that, this application is filed in collusion with the plaintiffs with a view to prolong the effective prosecution of temporary injunction applicant (Exh.5). Even otherwise, third party

applicant cannot be termed either as necessary or proper party for adjudication of controversy regarding suit way. Moreover, legal rights or interests of third party applicant over common boundary or impugned order of suit way can be protected through plaintiff No.2 being her a son and joint family member.

11. In view of foregoing discussion, I do not find substance in the application. As such, I found water in the argument advanced by the learned advocate for defendant No.2 in terms of observations made supra. On the other hand, I do not find substance in the argument advanced by the learned advocates for third party applicant and the plaintiffs. Thus, the application is liable to be rejected. In the result, I pass the following order.

ORDER

The application (Exh.142) is rejected with costs.

Date :- 03/01/2026.

(S. S. Budruk)
Civil Judge Senior Division,
Majalgaon.

CERTIFICATE

The contents of above order is/are word to word same and found correct in this pdf.

Dictated on : 03/01/2026.
Typed on : 03/01/2026.
uploaded on : 05/01/2026.

Sd/-
(H.B.Suryawanshi)
Steno-Gr.II
C.J.S.D.Majalgaon.