

MHBU160007082018



**Order below Exh.62 in R.C.S. No. 34/2018**  
**Pratapsing & Ors. Vs Omkar & Ors.**

Present application is moved by defendants under Order XIV Rule V of the Civil Procedure Code (for short 'Code') thereby prayed to frame additional issues.

02 - I have called say of plaintiffs. They filed their say at Exh. 63 thereby prayed to reject present application.

03 - Ld. Adv. Y.D. Patil for the defendants contended that the plaintiffs instituted present suit for partition and separate possession. The defendants appeared and filed their written statement in present matter. The defendants specifically mentioned in para No. 7 and 9 of their written statement that the plaintiffs instituted present suit after lapse of 12 years from the death of deceased Gajanan. Hence, present suit is not within limitation. Moreover, the defendants pleaded that present suit is liable to be dismissed due to the reason of non-joinder of necessary parties. The defendants further averred that the plaintiffs did not include all ancestral properties in present matter. This Court framed issues at Exh.13. It seems that aforesaid three issues are not framed by this Court. Hence, it is necessary to frame additional issues in order to adjudicate present matter effectively. With this, he prayed to allow present application.

04 - Per contra, Ld. Adv. S.A. Bhujbal for the plaintiffs submitted that this Court framed issues after considering plaint and written statement. Thereupon, both parties led their evidence. The matter is pending for final argument. At this stage, the defendants moved present application. Thus, present application is not maintainable and liable to be rejected. Hence, the defendants moved present application in order to prolong present matter. Therefore, it is not necessary and required to frame additional issues. Lastly, he prayed to reject present application.

05 - Perused the application & say. Heard both sides. I have gone thorough record of present matter.

06 - Present application is moved under Order XIV Rule V of the Code. Therefore, I reproduce said provision as follows:-

***Power to amend and strike out issues :-***

*1. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.*

*2. The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.*

07 - I considered above legal position. Bare perusal of Order XIV Rule V of the Code reveals that the Civil Court is having power to add or strike issues before passing a decree. The defendants moved present application before passing of decree. Therefore, present application is

tenable. The defendants prayed to frame three additional issues. In that regard, I have gone through record of present matter. The defendants pleaded in written statement that the plaintiffs instituted present suit after lapse of 12 years from the death of deceased Gajanan who was father of plaintiffs No. 1 & 2 and husband of plaintiff No. 3. Therefore, present suit is not within limitation. Thus, it appears that the defendants raised defence of limitation in present matter. However, said issue was not framed. Moreover, the defendants contended that the plaintiffs did not include necessary parties in present suit. In that regard, I have gone through evidence of Pratapsing (P.W.1). He admitted that he did not include his sister and four maternal aunt in present suit. The plaintiffs averred that the suit property was originally belonged to Nehalsing. Therefore, daughters of Nehalsing are also necessary party in present suit. Hence, I am of the opinion that issue of non-joinder of necessary party is also crucial issue in present matter. Furthermore, the defendants pleaded in written statement that the plaintiffs and defendants were having property in gat No. 264. As per the defendants, the said land is also their ancestral property. It is sound fact that all the properties needs to be included in partition suit. Therefore, I am of the opinion that three issues mentioned by the defendants are required to be framed for decision of the case. So also, it appears that the defendants pleaded in para No. 7 of the written statement that deceased Parubai partitioned ancestral properties among her sons i.e. defendants and deceased Gajanan. Therefore, I am of the opinion that said issue required to be framed. Moreover, if present application is allowed no prejudice will be caused to the plaintiffs as they are having right to lead evidence in that

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regard. Hence, I do not find any substance in the submissions of plaintiffs.

08 - Considering all these reasons discussed above, I am of the opinion that present application needs to be allowed without imposing costs. In result, I pass following order.

### Order

1. Application is allowed.
2. I proceed to frame additional issues below Exh. 13 in respect of limitation, non-joinder of necessary parties, non-inclusion of all ancestral properties and fact of previous partition.
3. No order as to costs.

Date:- 07/01/2026

Place:- Motala.

( Satishkumar Shripatrao Gaikwad)  
Jt. Civil Judge Jr. Div.,  
Motala, Distt. Buldana.