

**ORDER BELOW EXH.79 IN DISPUTE NO.40/2021**  
**Visapur Hsg. Soc. Visapur Vs. Ganesh Arjun Nagawade and others**

This is an application to add Siraj Yunus Sayyad as a opponent in the present dispute.

2] It is contended that the disputant has pleaded in para 4 of Exh. 1 that plot no.5 has been allotted to Siraj Yunus Sayyad and having 30 years old construction on the plot. Siraj Yunus Sayyad has left 15 feet open space from the southern side of his house on plot No. 5 for his personal use. Defendants have encroached on the property of member of plot No.5. Therefore, it is necessary for the determination of the matter in dispute to add the allottee of plot no.5 as a defendant in a suit.

3] It is further contended that the defendants have pleaded in written statement that allottee of plot no.5 has encroached on the road situated in between plot no.5 and 6. After considering the pleading, written statement paragraph no. 18, 20, 21 of the defendant defendant has continuously denying theory of encroachment and brought new theory that allottee of plot no. 5 has encroached on the road from his southern side of the house where road was situated to go to plot no.12 . In this circumstance, it is necessary to hear and add allottee of plot no.5 who is Siraj Yunus Sayyad as defendant in suit. Hence, it is prayed to add him in the dispute as a necessary party.

4] Opponent nos. 2 and 3 have filed their say on this

application at Exh. 89 and denied all the material allegations made against them. It is contented that opponent has filed written statement before the year 2021. The disputant society has given plot no.5 to Siraj Sayyad. There is a road in between the plot of Siraj Sayyad and the opponents. The opponent was making construction and at that time Siraj Sayyad has made written complaint to the disputant society. In view of the said compliant the disputant has filed the present application. There is no prayer made by the disputant against the Siraj Sayyad. If the application will be allowed, the dispute will be barred by misjoinder of parties. On these grounds it is prayed to reject the application.

5] Mr. Siraj Unus Sayyad has filed his say at Exh. 88 on this application. It is contended that he is the owner of plot no.5. There is open space of 20 ft towards southern side of his plot for going towards plot no.12. The opponent has started construction by encroaching 15 feet from the southern side of plot no. 5 on the road going towards open space and on his plot. Hence, he prayed to add him as a party in the present dispute.

6] Heard. Perused the record. The present application is filed by the disputant to add Mr. Siraj Unus Sayyad as party in the present dispute. Perused the pleadings of both the parties. In para 20 of the written statement of opponent Exh. 35 there are certain allegations made against the owner of plot no.5 Mr. Siraj Yunus Sayyad, the chairman and the secretary of the disputant society. It is averred in para 21 of the written statement that owner of plot no.5 Mr. Siraj yunus Sayyad has constructed the

house on more than the area allotted to him.

7] It is to be noted that the present is filed by the disputant who is society and it is filed for the removal of encroachment, for for the relief of perpetual and mandatory injunction. In the written statement Exh. 35 the opponents have also made allegations against the owner of plot no.5. The dispute is related to the encroachment made by the opponents on the open space situated in between plot no.5 and 6. Hence, considering the nature of dispute and pleading of both parties it is necessary to add Siraj Yunus Sayyad in the dispute as an opponent.

8] At the time of granting or rejecting the application for amendment the Court has to consider the proposed amendment shall not be caused injustice to the other side and secondly it is necessary for the purpose of determining the real controversies between the parties.

9] Here, in the present dispute definitely no prejudice or loss would be caused to the opponents and it also does not change the nature of the dispute. Hence, to decide the matter on merit and to determine the real controversy between the parties it is necessary to grant permission to amend the plaint. The opponents have every opportunity to rebut the contention of the disputant.

10] Therefore, in view of the above discussion the application is deserved to be allowed. Hence, I pass the following order-

**ORDER**

1. The application is allowed.
2. The disputant is permitted to add Siraj Yunus Sayyad as an opponent in the present dispute.
3. Parties to take note of this order.

Sd/-

( M. P. Jaswant )

Judge,

Cooperative Court,  
Ahmednagar

Date 07/11/2025