

MHGA090006132024

**IN THE COURT OF JT. CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI**

(Presided Over by S. A. Bhaisare)

**Reg.C.S. No. 54/2024**

PRAKASH SOMAJI SONTAKKE

... Plaintiff

-VERSUS-

ISHWAR MAROTI NAWALE

... Defendant

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**ORDER BELOW EXH. 34**(Passed on 31<sup>st</sup> January, 2026)

The present application has been made by the defendant no.1 under Order 1, Rule 10 of the Civil Procedure Code, 1908 thereby seeking to implead one Vimalbai Somaji Sontakke as a necessary party in the suit. The application is opposed by the plaintiff by filing his say at Exh.36.

2. Perused the application and reply thereon. Heard the learned advocate for the defendant no.1. No arguments advanced by the learned advocate for the plaintiff.

3. Learned advocate Shri. K.T. Satpute appearing on behalf of defendant no.1 has argued that the suit can not be effectively adjudicated without joining Vimalbai. She is a necessary party in the suit. Vimalbai has sold the suit property to plaintiff as well as defendant. Hence, it is necessary to add her in the suit to finally settle the controversy. Hence, the application may kindly be allowed.

4. Perused the record. The suit is for removal of encroachment, perpetual injunction and mandatory injunction. The counter-claim is for declaration, perpetual injunction and mandatory injunction. It is a settled law that the test to determine a necessary party is two folds.

(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings;

(2) no effective decree can be passed in the absence of such party.

5. On reading of the pleadings of rival parties, it appears that the plaintiff in counter-claim has added Vimalbai as defendant no.2 in the counter-claim. It prima facie seems that Vimalbai has sold the suit property to both plaintiff and defendant no.1. As regards the suit, no relief is claimed against Vimalbai. No cause of action arose against Vimalbai. So, there is no right to some relief against Vimalbai in respect of the controversies involved in the proceedings. Merely because Vimalbai is a party in the counter-claim, it does not make her a necessary or proper party in the suit. So also, seller is not a necessary party in a suit for removal of encroachment. Considering the nature of the suit, effective decree can be passed in the suit in absence of Vimalbai. It is not necessary to implead her in the suit in order to effectually and completely to adjudicate upon and settle all the questions involved in the suit. The defendant no. 1 in the suit can examine Vimalbai in the suit if required. Thus, no prejudice would be caused to him. In this premise, the following order is passed.

**ORDER**

1. The application below Exh No. 34 is rejected.
2. No order as to costs.

Sd/-

Place:- Chamorshi  
Date:- 31/01/2026.

(S. A. Bhaisare)  
Jt. Civil Judge, (Jr.Dn.),  
Chamorshi