


MHLA120011642013 	<u>Order Below Exh.85</u> <u>dated 20/03/2026</u>
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The present application is filed by defendant no.2 to 4 under Order 14 Rule 5 of Code of Civil Procedure for framing of additional issues.

02. Defendatns contended that suit is for partition and separate possession. During pendency of appeal, deceased defendant no.5 Rasikabai allegedly executed a Will in favour of plaintiff. Therefore, Hon'ble Appellate Court remanded the matter for fresh trial on the basis of Will. Deendants filed their additional written statement and specifically challenge mental and physical condition of deceased Rasikabai. The defendants also disputed right of Rasikabai to execute such will deed and further raised applicablity of doctrine of hotspot and limitation. Hence, he prayed to allow application and framed issues mentioned in the application.

03. Plaintiff filed his say at Exh.86 & opposed the application. He contended that court has already framed issues at Exh.33. Appellate court remand the matter only for consideration of Will. Proposed issues are covered under existing issues. The present application is filed to delay the proceedings. Hence, he prayed to reject this application.

04. Heard the Ld. Adv. J. V. Dhumal for defendants and Ld. M. S. Salgar for plaintiff.

05. Perused application, say filed it and record. It appears that suit was filed for partition and possession. Suit is decreed on 21/04/2016. Then, defendant filed R.C.A. No.36/2016 which was decided on 07/11/2025 and Hon'ble Appellate Court remand back the suit in respect of Will deed. Then, additional issue at Exh.33 was framed on 17/03/2026.

06. It is well settled principle under Order XIV Rule 5 of CPC the court has power to amend, strike out or frame additional issues at any stage if necessary for determining the real controversy between the parties. Defendants after matter is remanded filed his additional written statement and specifically take a defence about sound state of deceased Rasikabai. Legality of execute Will, applicability of hotchpot and limitation. The issue must be framed on allegation made by one party and denied by the other party. The validity of Will necessarily includes execution, mental capacity and authority. However, the issue of hotchpot and limitation are independent. From the above discussion, it is clear that for complete adjudication additional issues are required to be framed. Instead of striking of issue no.5, it would be appropriate to supplement that issue. In result, application deserved to be partly allowed. The original suit is of the year 2013 i.e. 10 years old. Therefore, it is necessary to try it as early as possible on day today basis.

Hence, I Pass following order:-

ORDER

01.	Application is partly allowed.
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02.	The addition issued framed at Exh.33
03.	The parties are directed to take care that suit be disposed as early as possible.

Nilanga
Dt 20/03/2026

(Smt. K. P. Gade)
Jt Civil Judge Junior Division
(Court No.2), Nilanga

Additional Issues

5. Whether plaintiff proves that deceased Rasikabai executed the Will dated 16/09/2016 in sound and deposing state of mind?
6. Whether deceased Rasikabai had legal right and authority to execute the said Will in favour of plaintiff?
7. Whether suit is within limitation?

Nilanga
Dt 20/03/2026

(Smt. K. P Gade)
Jt Civil Judge Junior Division
(Court No.2), Nilanga