


MHLA160000772009 	<u>R.C.S.No.59/2009</u> <u>Shakuntalabai Vs. Venkat & Ors.</u>
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-:: ORDER BELOW EXH.82 ::-

This is an application to add proposed defendant No.4 to 13 in the suit.

2. The plaintiff submitted that, she filed suit for partition and separate possession. The name of proposed defendant are recorded in revenue record of the suit property. The defendant No.2 Ashok Venkat Valse alienated the Survey No.26 area 2H.12R and 0 H.83R to Dilip Vyankatrao Biradar and Tukaram Uttam Biradar respectively. Dilip Vyankatrao Biradar alienated land area 1H.12R to Ramchandra Kishanrao Pete. Uttam alienated land to Arjun Tulshiram Kambale. Ramchandra Kishanrao Pete alienated land area 1H.12R to Harischandra Pundlik Jethure. They are necessary party of the suit. The plaintiff previously could not add them as party due to lack of information. The stage of suit will not bar to add them in this suit. She prayed accordingly.

3. Learned Advocate Shri. D.D. Somwad for defendant No.1 to 3 opposed this application and contended that the plaintiff is not a sister or daughter of defendants. She has no right to file the suit and application. He prayed to reject the application.

4. The proposed defendant Harishchandra Pundlik Jethure opposed this application and submitted that entire sale deeds executed prior to the year 1999. The plaintiff has not right

to challenge alienation of property prior to the year 2004. The plaintiff failed to add the proposed defendant within time and explained alleged delay. This application is based on false and imaginary story. Therefore, the plaintiff is not entitled to discretionary relief. The application is false and not maintainable. He prayed to reject the application with cost Rs.5000/-.

5. Other proposed defendant failed to file their say. Therefore, this application proceeded further without their say vide order dated 11/12/2025. This application was filed against dead person namely Kashibai Nivrutti Balwade. Therefore, I have closed and disposed this application against her vide order dated 11/12/2025.

6. Learned Advocate Shri. V. N. Sankaye for the plaintiff argued in support of application. Learned Advocate Shri. D.D. Somwad for defendant No.1 to 3 and proposed defendant Harishchandra argued in support of say and prayed to reject the application.

7. I have carefully gone through the record and argument of both parties. Firstly, let's go through provision of Order 1 Rule 3, 3-A and 10 (2) of the Code of Civil Procedure as under:-

O I Rule 3 ; all person may be joined in one suit as defendants where,

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction is alleged to exist against such persons, whether jointly, severally or in the alternative : and

(b) If separate suit were brought against such persons, any common questions of law or fact would arise.

O I Rule 3-A ; - Where it appears to the Court

that any joinder of defendants may embarrass or delay trial of the suit, the Court may order separate trial or make such other order as may be expedient in the interest of justice.

O I Rule 10 (2) : The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the question involved in the suit, be added.

8. This is suit for partition and separate possession. Firstly need to go through the history. It was decreed on 06/08/2011. That order was confirmed in First Civil Appeal No.08/2014. Thereafter the defendant challenged the Judgment and Decree before the Hon'ble Bombay High Court bench at Aurangabad in Second Appeal No.539/2021. The Hon'ble High Court remanded the matter for fresh trial and directed to dispose the same within 5 months from 16/10/2025 vide order dated 25/09/2025.

9. The defendant No.1 to 3 had filed their written statement along with application Exh.28 on 17/08/2004. But they have not pleaded alienations of property. Hence it is appeared that the plaintiff recently knew alleged fact. Therefore, there is no intention delay to add the proposed defendant. Her lack of knowledge is sufficient and satisfactory reason. The delay or the merit of suit cannot be considered while deciding this application. Therefore, the defendants contention is not accepted.

10. Accordingly, the part of suit property alienated to the proposed defendants and they possessed the same. Their interest is involved in the suit property. Therefore, they are necessary party in this suit. The suit can not be decided in their absence. If they are not added in this suit, the effective decree will not pass and alleged decree will prejudice to them. Only adding them in this suit will not be changed its nature or cause of action. The proposed defendant have ample opportunity to defend the suit in respect of their defence.

11. Hence, I concluded that, they are necessary party of this suit. Their presence in this suit is necessary to enable the Court effectually and completely adjudicate the question involved in the suit. Hence, I find substance in this application, which is deserved to be allowed. Hence, I passed following order.

-:: ORDER ::-

- 1) The application is allowed as prayed in the interest of justice
- 2) The plaintiff shall add proposed defendants except Kashibai Nivrutti Balwade and amend the nomenclature of suit.
- 3) If plaintiff failed to comply the order, necessary order will be passed.
- 4) An order dictated on computer and pronounced in open court.

Date : 15/12/2025.

(S.A. Surjuse)
Civil Judge Junior Division,
Deoni.