

**R.C.S. No. 12/2014**  
**Prakash Jadhav Vs. Manisha Jadhav**

**ORDER BELOW EXH. 50**  
(Passed on 28<sup>th</sup> March 2023)

This is an application u/o 1 Rule 10 of code of Civil Procedure for strike out name of defendant no. 1 from suit.

2. Read the application and say thereon. Heard the learned counsel for the plaintiff and defendants.

3. The learned counsel for the Plaintiff submitted that the plaintiff has filed instant suit for Declaration and partition. By this application plaintiff contended that, defendant no. 1 has re-married with Vilas Medhe and Out of that marriage they have one child. Hence as per law she is not entitled for share in property. Plaintiff filed on record, Photos of marriage, Birth certificate of child, Notice, receipt of notice and prayed for strike out name of her from the suit.

4. On the contrary, Ld. Counsel for defendants submitted that, the instant application is not tenable in the eyes of law. The proposed defendant is concerned with the suit property and therefore, he is necessary party. Statement made in applications are not specifically admitted by plaintiff. Hence, submitted for rejection of this application.

5. Perusal of plaint, reveals that the plaintiff has filed instant suit for declaration and partition. In this suit, the plaintiff has contended that the suit property is ancestral property and defendant no. 1 is re-married with another person therefore she has no right in ancestral property. As per Order I Rule 10 (2) Code of Civil Procedure "*The Court may at any stage of the*

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*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,”* as per this rule court can strike name of party when party is added in suit improperly but in the present case the name of defendant no. 1 is not added improperly she is added in suit because she was wife deceased Sunil and she is necessary party.

6. In the suit of partition, all the co-sharer are essential party. The suit can not effectively adjudicate without presence of all co-sharers. Also it will be decide at stage trial whether she is entitled for share or not. This is not just and proper to strike out her name because is remarried. This suit is for partition and not Maintenance to strike her name just because she is re-married. To adjudicate the suit properly her presence is necessary. If this application is not allowed, there is possibility of multiplicity of the proceedings. Due to this application, obviously, defendant may suffer. Therefore, I pass following order.

### **Order**

1. The application below exhibit 50 is hereby rejected.
2. Parties to bear there own cost.
3. Both Parties to take a note.

Dt. 28.03.2023.  
Pimpalgaon (B).

(Ashlesha S. Mate)  
Jt. Judicial Magistrate F. C.,  
Pimpalgaon (B).