

MHOS070003182026**Reg. Civil Suit No.99/2026****Mangala Madhav Shinde & another****- Versus -****Shankar Ramrao Shinde.****ORDER BELOW EXHIBIT- 31**

1. This is application moved by third party namely Shrawan Raghunath Suryawanshi (Shinde) for added his name as a defendant in pending suit.

2. The plaintiff have instituted the present suit against the defendant seeking partition and separate possession of their alleged share in the suit property. The plaintiff No. 1 and 2 in present proceeding are respectively daughter in law and grand daughter of deceased Ambaji Shinde. Who was the real maternal uncle of applicant. Further the defendant is also a real maternal uncle. The applicant/third party is a necessary party to present proceeding as reflected in the genealogy produce on record. The applicant mother deceased Vithabai Raghunath Suryawanshi (Shinde) was a one of the family member of the plaintiff and defendant.

3. The suit property forming the subject matter of the present suit is ancestral and joint property belonging to plaintiff, defendants

and the applicant as a member of Hindu joint family. The property standing in the name of the defendant and deceased Mandakini Shinde was acquired out of the nucleus of the ancestral and joint family estate and therefore constitute joint family property. The applicant is the lawful legal heir of his deceased mother Vithabai. She died without leaving any male issue. The applicant grandfather deceased Ramrao Shinde owned ancestral property situated in Kasagi, Tq.- Omerga bearing survey/Gut number 418 admeasuring 01 acre 19 Guntas. The property is ancestral in nature. The deceased Ambaji, Vithabai and defendant Shankar having equal and appropriate right, title and interest in the aforesaid ancestral property by virtue of succession and coparcenary right. The deceased Vithabai had a possession over the said property during her life time. The applicant is a necessary and proper party to the present proceeding and no effective adjudication is made in his absence because applicant is the co-owner and co-sharer of said property.

4. It is submitted that effective plaintiff and defendant are acting in collusion with each other and have deliberately failed to implead the applicant in present suit with intention of depriving him of his lawful share in suit property. It is further submitted that defendant has falsely pleaded that deceased Vithabai in or about the year 1954 has relinquished or surrender her right and share in favour of deceased Ambaji and defendant Shankar. Such contention is wholly false, incorrect and unsupported by any legal evidence. There is no legal support to the contention of defendant that deceased Vithabai has relinquish her share. The entry on 7/12 extract of gut No. 418 are merely for family arrangement. Lastly he prayed for to allow the application.

5. Defendant file his say and submitted that applicant is not necessary party to present proceeding. The applicant is son of deceased defendants sister Vithabai. Applicant never be a co-owner and co-sharer in the suit property as property is not his ancestral or inherited property. He further submitted that defendant's sister relinquished and abandon her right in the year 1954, during her life time. Vithabai never raised any objection or initiated proceeding regarding said property. Further third party/ applicant has also not acquire any legal right or interest in suit property.

6. It is further submitted that after partition effected in year 1954 plaintiff father in law and defendant No. 01 were each allotted 30 acre of land out of survey No. 418 and since partition they have been in separate possession and enjoyment of their respective share. After death of plaintiff father in law namely Ambaji the husband of the plaintiff got his share in the house and landed property. The suit property is self acquired property of the defendant. Neither plaintiff nor applicant has render any financial assistance to defendant. The suit property i.e gut no 418 adm 04 H 53 R out of which 00H 30 R mauje Kasagi is ancestral property. From this averment in plaint itself it is evident that this property has came to defendant by partition. It is further submitted that in the year 1954 an oral partition took place between plaintiff father in law and defendant and since then they have remain in separate possession and enjoyment of their respective share. The defendant have produce the revenue record in support of contention. Therefore plaintiff have no any right in the land bearing gut no 418 situated at Kasagi. Therefore he prayed for to reject the application.

7. The plaintiff filed his say on the back-leaf of the application. He submitted that plaintiff has admitted the pedigree of family. Applicant/ third party is a necessary party in the suit. It is necessary to add the applicant in pending suit for decided the suit on merit.

8. Perused the record heard the Ld. Advocate for the applicant Shri R. N. Jadhav, Ld. Advocate for the plaintiff Shri S. S. Rajeshwarakar and Ld. Advocate for the defendant Shri M. N. Bansode.

9. The plaintiff has instituted the present suit seeking partition and separate possession, alleging the same to be a joint family property. Though the plaint contain an averment that property gut no 418 adm. 04 H 53 R out of which 00H 30 R mauje Kasagi is an ancestral property, but no relief has been claimed in respect thereof. The subject matter of the property present suit is confined only to property which are mention in para No. 01 of the plaint which is admitted by the plaintiff that property are purchase by plaintiff, husband of the plaintiff and defendant from the income of their salary in the name of the deceased wife of defendant Namely Mandakani.

10. The applicant assert that his deceased mother had a share in the family property and consequently he has inherited such share. However, the application does not disclose any prima facie right or interest of the applicant in the property which is form the subject matter of the suit. The applicant claim appears to relates to property gut no 418 adm. 04 H 53 R out of which 00H 30 R mauje Kasagi which is not subject matter of the adjudication in the present proceeding.

11. Under order 10(2) of the code of Civil Procedure Code the court may added a person only if such person is a necessary or proper party. A necessary party is one without whom no effective decree can be passed, while proper party is one whose presence is necessary for complete and effective adjudication of the question involve in the suit. Since no relief has been claimed regarding property gut no 418 adm 04 H 53 R out of which 00H 30 R Mauje Kasagi. The right if any of the applicant/third party in respect thereof can not be adjudicated in the present proceeding and effective decree concerning property gut No. 418 adm. 04 H 53 R out of which 00H 30 R mauje Kasagi Can be passed in the absence of the applicant. Therefore the applicant is neither necessary party nor a proper party to the present suit.

12. The Ld. advocate for the non defendant placed his reliance on **H.Vasanthi V A. Santha (Dead)Through LRS Nad Others wherein Hon'ble Supreme Court of India** wherein held that there is no prohibition to effect the partition until there exit any instrument in writing and executed according to law. But present case is at initial stage there is issue about the addition of party is necessary party or not. Therefore with giving due respect to aforesaid citation of Hon'ble Supreme Court of India I would like to say that said aforesaid citation are not applicable to case in hand. He further relied on **Angadi Chandranna V Shankar and others Civil appeal no 5401 of 2025 (arising out of SLP (c) No 6799 of 2022)** where in Hon'ble Supreme court held about the issue of self acquired property. Therefore with giving due respect to aforesaid citation of Hon'ble Supreme Court I would like to say that fact of the aforesaid citation and fact of case in hand are not identical therefore said aforesaid citation are not applicable to case in hand.

13. He further relied on **Bhagawat Sharan (dead through Lr)v Purushottam and others Civil Appeal No 6875 of 2008**. Wherein main issue in this case is about onus on the person who alleges that the property is joint property of Hindu Undivided Family. There is no issue at this stage. Therefore with giving due respect to aforesaid citation of Hon'ble Supreme Court I would like to say that fact of the aforesaid citation and fact of case in hand are not identical therefore said aforesaid citation are not applicable to case in hand.

14. He further relied on **Smt Uma Devi and Others v Sri Anand Kumar and others Civil appeal no of 2025 (arising out of SLP (c) No 2137 of 2025)** where in issue discuss regarding the long delay rendering the suit vexatious and meritless. There is no question regarding the long delay in case in hand. Therefore with giving due respect to aforesaid citation of Hon'ble Supreme Court I would like to say that fact of the aforesaid citation and fact of case in hand are not identical therefore said aforesaid citation are not applicable to case in hand.

15. Therefore, from the aforesaid discussion the following order is pass-

ORDER

1. Application is rejected.
2. No order as to costs.

Date : 29/07/2026

(Shri K. N. Nivdange)
Jt. Civil Judge, J.D., Omerga.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of Stenographer	-- -	S. B. Bhingare,
Court	-- -	jt. C.J.J.D. & J.M.F.C. Omerga.
Date	-- -	29/07/2026
Order signed by the Presiding Officer on	-- -	29/07/2026
Order uploaded on	-- -	29/07/2026