

CNR NO. MHPU100001812023



IN THE COURT OF CIVIL JUDGE (JR. DN.) P.C.M.C. COURT AKURDI, PUNE.
R.C.S. No. 70/2023
<u>Mubarak Abbas Shaikh</u>
-Vs-
<u>P.C.M.C. & Ors.</u>

ORDER BELOW Exh. 65.
(Passed on 24.04.2026)

This is an application filed by the plaintiff for deletion the name of defendant no.5 and struck out of his defence.

2. Called say of defendant no.5 and other parties.
3. Counsel for plaintiff submitted and argued that, he has subsequently added defendant no. 5 in array of suit. The defendant no. 5 has transferred suit property by way of Hiba-Nama dated 10/06/2023 in favour of his grand son Mr. Shaoib Abdul Gani Shaikh. He further argued that, effect of the Hiba-Nama, this defendant No. 5 is not having any right, interest and title in the suit. He is not owner of the suit property. Therefore, he prayed to remove and delete his name from the array of suit and his defence also be struck out.

(2)

4. On the other hand defendant no.5 strongly opposed the application and argued that, the defendant no. 5 have been added in the array of defendant subsequently. He have also disclosed the fact in regard of Hiba-Nama in RCS no. 109/2023. Now, the matter is pending for hearing on Exh.5 but deliberately plaintiff have filed this application to prolong the matter. The plaintiff illegally constructed on the suit property and shop have been given on rent and taking lots of rent amount from the tenants. Lastly he prayed to reject the application.

5. Heard learned counsel Shri. K. A. Ashrafi for plaintiff, and learned counsel Shri. C. S. Gaikwad for defendant no. 5 at length. Considering the submission and say, following points arise for my determination and my findings with reasons is as follows-

Sr. no.	Points	Findings
1)	Whether it is necessary to delete the name of defendant no. 5 from the array of suit and struck out his defence as per O.1 R.10 of CPC?	Negative.
2)	What Order?	As per final order

REASONS

6. **AS TO POINT NO.1 AND 2 :**

The Order 1 Rule 10 is very important. For ready reference, the Order 1 Rule 10 (2) of C. P. C. is as follows -

“(2) Court may strike out or add parties :-

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 questions involved in the suit, be added.”

7. After reading the above said provision then, it shows that, court may at any stage of the proceeding either upon or without the application may joined or struck out as a parties to the suit. Means, it is a discretionary power of the court. A necessary party is one without whom no order can be made effectively. The court is empowered to join a person who's presence is necessary.

8. Perused whole record. The suit is filed for declaration and permanent injunction. It is admitted fact that initially the suit was filed only against the defendant no. 1 to 4 and defendant no. 5 have been added after the amendment. After the appearance of defendant no. 5 have filed written statement and disclosed the fact in regard of Hiba-Nama dated 10/06/2023.

9. Defendant no. 5 is the father of plaintiff. There are some disputes between them in regard of suit property. Though whatever Hiba-Nama have been executed in favour of his grandson. But at this

(4)

stage Hiba-Hama is not proved. Moreover, the name of defendant no. 5 is also shown. I think the relief claimed by the plaintiff, the defendant no. 5 prima facie shows that he is the necessary party, whose presence is necessary for complete and final decision of the matter and settled all the questions involved in the suit. Therefore, considering the facts and circumstances of this case, I have come to the conclusion that, there is no need to delete the name of defendant no. 5 in the array of suit and struck off his defence. Hence, I answered point no.1 in the negative and for point no. 2, I proceed to pass the following order:

ORDER

The application is hereby rejected.

Dated: 24/04/2026.

Sd/-xxx
(V. S. Damare)
Civil Judge Junior Division
(P.C.M.C. Court), Akurdi, Pune.

CERTIFICATE

"I affirm that the contents of this P.D.F. file Order are same word for word as per original Order".

Name of Stenographer :- P. B. Jadhav

Court Name :- Shri. V. S. Damare,
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),
Akurdi, Pune.

Date :- 24/04/2026

Order signed by
presiding officer on :- 24/04/2026

Order uploaded on :- 24/04/2026