

**Sanjiv Vichare Vs.
Varsha Mali & Ors.**

ORDER BELOW EXHIBIT 20 IN RCS NO. 95/2018
(Decided on 25/09/2018)

The defendant No.2 presented this application for deleting him from the suit under Order 1, Rule 10 of Code of Civil Procedure. Perused the application and say of the plaintiff. Heard Ld. Adv. of both the parties.

02. The defendant No.2 submitted that he is a husband of the defendant No.1. He submitted that the defendant No.1 has purchased the non agricultural plots, therefore there is no need to add him in the suit as the defendant. He submitted that there is a boundary dispute between the plaintiff and the defendant Nos. 1, 3 and 4 and he has nothing to do with the same. He submitted that the plaintiff made him the party in the suit without any sufficient cause. Hence, he prayed for deleting him from the suit.

03. The plaintiff filed his say and resisted the application. He contended that the defendant Nos. 1 and 2 obstructed his possession in the suit property. He contended that though the name of the defendant No.2 is not recorded to the record of rights of the property he has created obstruction to the suit property. Therefore, he prayed for rejection of the application.

04. The present suit is for removal of encroachment and possession of the property described in para.1 of the plaint. The defendant No.2 claimed that there is a dispute between the plaintiff and other defendants and he has nothing to do with it. However, the

plaintiff claimed that the defendant No.2 obstructed his possession along with his wife defendant No.1. The plaintiff is a dominus litus and he has a right to claim his right against any person who violates his rights. Further, whether the defendant No.2 obstructed the plaintiff's possession to the suit property would be decided only after the evidence of both the parties come on record. This is not a stage to decide whether defendant No.2 is a necessary party or proper party to the suit. The defendant No.2 can show that he is not a necessary party only after commencement of trial. But at this stage he could not be deleted as party to the suit considering the nature of the suit and relation with the defendant No.1. In the light of above facts and circumstances I pass the following order.

-: ORDER :-

Application is rejected.

No costs.

Mangaon.

Date:- 25/09/2018.

(G.S. Hange)

Civil Judge J.D. Mangaon.