



CNR No. MHSI070000872010
Order passed below Exh. No. 247
in R.C.S. No. 65/2010

The present application has been filed by the plaintiff under Order XIV Rule 5 of the Code of Civil Procedure seeking deletion of the issue framed regarding non-joinder of necessary parties.

2. It is the contention of the plaintiff that the present suit has been filed for partition and separate possession. It is further contended that defendant No.1 had appeared and filed his written statement and after his death, his legal representatives have also filed their written statements. It is contended that in the written statement, the defendant had not disclosed any genealogy. However, by moving an amendment application in the year 2025, the defendants have attempted to introduce a false and imaginary genealogy. On the basis of the said amendment, the defendants have raised a plea of non-joinder of necessary parties.

3. It is contended that the persons named in the amended written statement are imaginary persons and have no right, title, or interest in the suit property. Therefore, they are not necessary parties. It is submitted that unless the defendants prove that such persons are necessary parties, the issue of non-joinder cannot be sustained. On

these grounds, the plaintiff has prayed for deletion of the issue relating to non-joinder of necessary parties.

4. The application is resisted by the defendants by filing a reply on the application itself. It is contended that the issues are framed on the basis of pleadings of both the parties. It is further contended that if the genealogy pleaded by the defendants is false or imaginary, the plaintiff can lead evidence to disprove the same. Without recording evidence, such an issue cannot be deleted at this stage. Hence, the defendants have prayed for rejection of the application.

5. I have heard both the sides and perused the record. The suit is for partition and separate possession. It is admitted that the defendants have amended their written statement. By way of the said amendment, the defendants have inserted a genealogy and have asserted that the persons named therein have a right and interest in the suit property.

6. Issues are required to be framed on the basis of pleadings of both the parties. In the present case, the defendants have not merely raised a vague plea of non-joinder of necessary parties. On the contrary, they have specifically named certain persons who, according to them, are necessary parties to the suit. Therefore, framing an issue regarding non-joinder of necessary parties is necessary.

7. The contention of the learned advocate for the plaintiff that the defendants must first prove that such persons are necessary parties cannot be accepted. Issues are framed on pleadings and not on prima facie proof. Once an issue is framed, the parties are required to lead evidence on that issue. As rightly submitted by the learned advocate for the defendants, if the defendants fail to prove the genealogy pleaded by them, the issue will be answered in the negative. In view of the above discussion, the application is without merit and liable to be rejected. Hence, the following order is passed:

	<u>ORDER</u>
1.	The application at Exh. 247 is rejected.
2.	No order as to cost.
	(Pronounced and dictated in open Court.)

Place : Malvan
Date : 10/02/2026

M.K.Fakih
Civil Judge (J.D.) Malvan.