



Defendant has filed the application under order I Rule 13 R/w. Rule 9 of The Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') for the directions to Plaintiff to add necessary parties.

02. It is contended that, in paragraph No. 4 of the suit Vinayak Madhusudan Desai and Suryaji Madhusudan Desai are alleged to have encroached and made construction. However, they are not added as parties. As such in absence of these parties the real controversy between the parties cannot be identified and accordingly the suit cannot be decided on merit. Hence, it is prayed that, the Plaintiff be directed to add them as parties to the suit.

03. Plaintiff objected the application by filing say on the application itself. It is contended that, the present suit is for injunction. That, the persons who have made encroachment are added parties to the suit. Accordingly, the present application be filed only in order to delay the matter. Hence, it is prayed that, the application be rejected.

04. Perused the application and say. Ld. Advocate for the Plaintiff and Defendant failed to argue the matter.

05. On perusal of the Plaint, it can be seen that, in paragraph No. 4, it is pleaded that, Vinayak i.e. brother of Plaintiff has made construction of house No. 385 in the suit property and the total area of 1000 Sq. Ft. is in his possession. So also, the other brother of Defendant i.e. Suryaji have started construction of new house at the place of house No. 34A and accordingly, the area of 600 Sq. Ft. in

his possession. Further it is contended that, the Defendant have made construction of new house in 1200 Sq. Ft. area. It can be seen that, though it is contended in the Plaint that, Defendant and his brother have made the construction separately, the Plaintiff have opted for relief of mandatory injunction only against the alleged construction made by the present defendant.

06. At this juncture, it is necessary to understand that, as per Order -I Rule 13 of CPC, the objection in respect of non joinder of necessary parties shall be taken at the earliest opportunity. However, Rule 9 of CPC specifically states that, no suit shall be defected for non joinder or miss joinder of necessary parties and the Court may in such a suit, deal with the matter if controversy so far as regards the rights and interest of the parties actually in it. Under such circumstance, the Plaintiff being dominus litus is at the liberty of adding the parties, considering the fate of non joinder of any necessary parties. Hence, considering the pleading and prayers of the suit, I do not deem it necessary to direct the Plaintiff to add any parties to the suit. Accordingly, the present application is liable to be rejected with costs. Hence, I proceed to pass the following :-

**-:: ORDER ::-**

1. Application is rejected with costs.

Place : Dodamarg.  
Date : 08/05/2024.

( Y. P. Bavkar )  
Civil Judge (Junior Division),  
Dodamarg.