

MHSN020008722025	<u>Special Civil Suit No. 136/2025</u> <u>(Dhanyakumar Balaso Kothale Etc.</u> <u>Vs.</u> <u>Balaso Alias Balasaheb Shripal Kothale etc.)</u>
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Order Below Exh. 26
(Passed on 31/10/2025)

Perused application and say at Exh.28. Heard both learned advocates and gone through the record of proceeding.

2. Perusal of record shows that, suit has been filed for partition, separate possession, declaration and injunction against defendant Nos.1, 2 and 3. Out of which defendant no.3 is a co-operative society. The plaintiffs themselves admits that they have not issued pre-suit notice to defendant No.3 before filing present suit. Therefore, they want to delete the name of defendant No.3 and after compliance of Section 164 Maharashtra Co-operative Societies Act. They may again pray for joining defendant No.3 as party.

3. In support of the contention, they have relied upon the decision of Hon'ble Bombay High Court in case of *B. Y. Chavan & Anr. v/s Association of Tenants of Bombay Catholic housing society and others (Chamber summons No.641/2011 in Suit No.1/2019)*. I have gone through this decision. In this decision Hon'ble Their Lord Ship has observed that, this technical lacuna can be cured by deleting the party to whom statutory notice was required to be given before filing suit in case of non compliance of the provision the plaintiffs may delete the name of the concerned defendant. After compliance of the provision, he may pray for adding it party. However, in case in hand by deciding application Exh.

19 this court has held that, the suit is for partition separate possession, declaration and injunction against defendant Nos.1 and 2 who are coparceners or joint family members and to the family of the plaintiffs and defendant Nos. 1, 2. defendant No.3 is stranger. Therefore, suit is tenable in respect of defendant No.1 and 2 and plaint can not be rejected in part. Therefore, it has to proceed further to the extent of defendant Nos.1 and 2.

4. Moreover, it is settled law that, the plaintiff is the master of the suit, he may abandon claim against any of the defendant and he will be responsible for the consequences ensue. Therefore, in my view no prejudice will case to the defendants if the application is allowed. Hence, in my view following order will meets the end of justice.

ORDER

1. Application (Exh.26) is hereby allowed.
2. The plaintiff is directed to carry out necessary amendment within 14 days from the date of this order and submit amended copy forthwith.

Date 31/10/2025.
Sangli.

(Vibha P. Gaikwad)
Jt. Civil Judge Sr.Dn., Sangli.