

**ORDER BELOW (EXH.74)**  
**(Passed On 01/12/2023)**

This is an application **(Exh. 74)** filed by the applicant in view of order I rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter referred as 'the CPC', for sake of brevity) for addition of herself as defendant no. 2 to this suit.

2] She contended in the application that, present suit is instituted for partition and separate possession. The suit property para no. 1B, i.e. block no. 172 was partitioned between herself and the defendant by compromise decree in R.C.S. no. 162/2006. Originally, block no. 172 was lie in the name of the defendant. Now, though 0.99H area appears in the name of the defendant still by the compromise decree in R.C.S. no. 1262/2006, the applicant has right, share, interest in the suit property para no. 1B. The defendant fraudulently sold out share of this applicant to the purchaser Ganesh Yalmar without entering the name of applicant in the 7/12 extract. Further, the defendant purchased block no. 48 i.e. suit property para no. 1A out of the consideration of above sale. Hence, it is necessary to add this applicant as defendant as she is interested party in the suit. When, on 28.09.2023 the applicant went at the house of the defendant, she questioned about this suit to the defendant, the defendant denied and neglected the subject. Further, the applicant received an information that, the plaintiff and the defendant are in attempt to partition said block number by avoiding share of this applicant. Hence, the cause of action arose to this applicant to file the instant application. Accordingly, she prayed to allow the application and to pass necessary order to add her as defendant no. 2.

3] Plaintiffs have filed their say to this application at Exh. 77 and denied all the contentions in toto. They specifically submitted that, the case is pending for cross-examination of PW no. 1. Suit properties are ancestral properties of the defendant. Thus, the applicant has no right, title, interest

or share in the suit properties. Till today she has not challenged any mutation entry effected in 7/12 extract. The applicant has to file separate suit for all the remedies available to her if any. The Hon'ble Supreme Court settled that, the plaintiff is dominus litus of his suit. Hence, nobody can be added as defendant against the wish of the plaintiff. The applicant is neither necessary party nor proper party in the absence of which the effective decree cannot be passed. She mentioned false cause of action. Only in order to prolong the suit, the applicant has filed this application. Thus they prayed to reject the application by imposing costs of Rs. 25,000/-.

4] The defendant has filed his say to this application at Exh. 78 and denied all the contentions as false and frivolous. He specifically submitted that, the applicant is married, living with her in laws peacefully, she did not require share in the present partition. Her financial conditions is well than the defendant. She is not entitled to any share in the suit property. Suit property block no. 558/1/A/2 is the self acquired property of the defendant. Neither the plaintiff nor the applicant are entitled for share in the same. There is no cause of action arose to the applicant to file such application. Accordingly, he prayed to reject the application with heavy costs.

5] The points for determination along with the finding & the reasons thereon are as under –

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the presence of proposed defendant no. 2 that is this applicant is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit as per Order I rule 10(2) of the CPC, 1908 ?	<b>Yes.</b>

2.	What order ?	<b>Application is allowed.</b>
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### REASONS

#### As To Point No. 1

6] Heard Learned Advocate for the applicant and the plaintiff. They reiterated their contentions as per the pleadings. Ld. Advocate for the defendant failed to argue till today. Hence, the application is proceeded without hearing argument on behalf of the defendant.

7] Perused the record. It shows that, the plaintiff has filed instant suit for the relief of partition and separate possession. With the instant application, the applicant filed documents at list Exh. 81/1 i.e. photocopy of decree passed in R.C.S. no. 162/2006. On perusal of photocopy of said decree, it appears that, the suit property para no. 1B i.e. block no. 172 was the suit property para no. 1/6 ad-measuring of 2H 94R, in R.C.S. no. 162/2006. The decree shows that, block no. 172 was lie in the name of the defendant and by the compromise, the area of 1H 60R out of whole block no. 172 on the south side, was allotted to the share of the defendant and the area of 1H 24R out of whole block no. 172 on the north side was allotted to the share of the applicant. Accordingly, the decree was passed on 10.04.2006. However, till today there is no record filed either by the plaintiff, the defendant or the applicant, whether said decree was executed or not or any such a execution petition is pending or not. Accordingly, on perusal of 7/12 extract at Exh. 64 for block no. 172, it appears that, the defendant possesses 0.99R area and another person namely Ganesh Yalmar possesses 1H 95R area. However, till today there seems no entry in the name of this applicant in the 7/12 extract, or no such mutation entry filed by any party.

8] Hence, from the above discussion it seems that, till today said compromise decree was not executed. Moreover, there is no record that,

said decree is challenged in any court, by any party till today. Thus, said compromise decree attains its finality. Thus, prima facie seems that, applicant has right, title and share which is already decided by the court, in the suit property.

9] Now, Ld. Advocate for the plaintiff raised objection that, till today the applicant has not challenged said mutation entry in the name of the purchaser, nor attempted to execute the said decree. Moreover, the limitation of 12 years for filing execution petition is elapsed. She cannot claim right again if already given by the decree. The right of the applicant is extinguished by limitation. For this purpose, he relied upon the authority laid down in **Neela Chinna and others Vs. Gangadharan Pillai, decided on 25.03.2011 by Hon'ble High Court of Kerala**, wherein it is held that, *“if the appeal is disposed off on merit after expiry of 12 years form date of trial court decree, still execution petition can be filed within 12 years, from the date of appellate decree as there is merger. However, the decree holder would run risk if a tactful appellant gets his appeal dismissed for default after expiry of 12 years from the date of trial court decree. As there is no merger due to dismissing the appeal for default, the contention of the decree holder execution petition filed within time cannot be accepted.”*

10] From this authority, it appears that, there is 12 years limitation for filing execution petition in partition suit and the circumstances mentioned are applicable in case of filing appeal. In the instant suit, there is no such situation that, the appeal is pending against the decree passed in R.C.S. no. 162/2006. Article 136 of the Limitation Act prescribes the limitation for execution of any decree or order from the date of passing the decree or order.

11] However, in view of the authority laid down in **Hon'ble Supreme Court, in Venu Vs. Ponnusamy Reddiar (dead) Thr. Lrs. (2018) 15 SCC 254**, wherein it is hold and settled by Hon'ble Supreme Court that,

*“ When once the rights of the parties have been finally determined in preliminary decree, an application by thereto or the legal representative for effecting the partition in accordance with the directions contained in the preliminary decree can never be construed to be an application within the meaning of Limitation Act. It shall be taken to be an application in a pending suit and therefore the question of limitation does not arise. Hence, until the final decree is passed in partition suit, limitation will not come into claim for the execution petition because the suit continues till final decree is passed.”* Thus, in view of the above authority, there is no limitation period for execution of preliminary decree for partition. Accordingly, the authority referred by Ld. Advocate for plaintiff with due respect is not considerable.

12] Ld. Advocate for the plaintiff further relied upon, **Mumbai International Airport Pvt. Ltd Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Ors, AIR 2010 Supreme Court, 3109**, wherein it is held that, *“when appellant is neither claiming any right or remedy against the first respondent and when first respondent is not claiming any right or remedy against the appellant, in a suit for specific performance by the first respondent against AAI, the appellant cannot be a party.”* In this authority the suit is in respect of relief of specific performance. Thus, the appellant as has not claim any right or remedy against the first respondent, he cannot be party to the suit. However, in the instant suit, the suit is for the relief of partition and not the specific performance. Thus, every plaintiff is defendant and every defendant is the plaintiff in the partition suit. Even though, for the sake of argument, it may be presume that, the applicant has claim, right and interest against defendant only, yet considering the nature of the suit, there seems no hurdle for addition of the applicant as defendant no. 2. Accordingly, the authority referred by Ld. Advocate for plaintiff with due respect is not beneficial.

13] Accordingly, in partition suit every interested party is deemed to be plaintiff. With that perspective, in view of O. 1 R. 10 of the CPC, 1908, it seems that, the presence of the applicant seems to be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Considering the above discussion, the applicant appears to be necessary party to the suit and consequently, she needs to be joined as defendant no. 2 in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit as laid down by order I rule 10(2) of the CPC. Consequently, I answer point no. 1 in the **affirmative**.

**As To Point No. 2**

14] As point no. 1 is answered in the affirmative, the applicant herself has filed this application, hence it would be proper to impose costs of this application on herself. In the result, in answer to point no. 2 following is the order:

**ORDER**

1. The application **(Exh.74)** is allowed.
2. The applicant to bear costs of this application.
3. The plaintiff is directed to add the applicant namely Trupti Dattatraya Choghule as defendant no. 2 and to carry out the necessary amendment in the plaint within 14 days from the date of this order.
4. The plaintiff is further directed to file amended copies as necessary within 14 days from the date of this order.
5. After the compliance by the plaintiff as above, the proposed defendant no. 2 is directed to file written statement within 30 days.
6. Parties to take note. SD/-

Place – Pandharpur  
Date – 01/12/2023.

( Sonal A. Salunkhe)  
5<sup>th</sup> Jt. Civil Judge, Junior Division,  
Pandharpur.



Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:- M.P.Gheradi ( L. G.)
Court	:- 5 <sup>th</sup> Jt.C.J.J.D. & J.M.F.C. Pandharpur
Date	:- 01.12.2023
Judgment/Order signed by the Presiding Officer	:- 01.12.2023
Judgment/Order uploaded on	:- 04.12.2023