

**Spl.C.S. No.42/2014.**

**Order below Exh. 90**

This is an application under Order 1 Rule 10 of Civil Procedure Code.(Hereinafter referred as “C.P.C.” for the sake of brevity and convenience).

**Brief contents of the application as under :-**

02. It is contended that, suit 1A property specifically described in plaint para No. 6, is a shop and the plaintiffs have contended in plaint Exh. 1 that, they themselves are using suit 1A property. Accordingly, defendant No. 1 has issued notice to plaintiffs on 11.01.2016. However, without any consent of the defendant No. 1, the plaintiff have let this shop on rent to one Karbhari Developers, Proprietor Ranjeet Jadhav by executing written agreement and have taken huge amount of deposit from him. So he is necessary to be joined in this suit as the defendant. Hence, the defendant No. 1 prayed for allowing the application and adding proprietor Karbhari Developers Ranjeet Jadhav as defendant No. 6 in this matter.

03. The plaintiff resisted application under consideration by filing say overleaf of the application under consideration itself. They prayed to pass necessary order.

04. Heard both learned advocates and gone through record of proceeding. Defendant no 1 and 3 have moved this application under order 1 Rule 10 (2) of C.P.C. Therefore, for convenience I am reproducing the relevant provision below :-

**Order 1 Rule 10(2) C.P.C.:- Court may strike out or add parties:**

“(2) Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just order, that the name of any party improperly joined, whether as plaintiff or

defendant, be struck out, and that the name of any person who ought to have been joined whether plaintiff or defendant or whose presence before the court may be necessary in order to enable the Court effectually, and completely to adjudicate upon and settle all the question involved in the suit, be added.”

05. Bare reading of this provision makes it clear that the court may add any person who ought to have been joined or whose presence before the court may be necessary in order to enable the Court effectually, and completely to adjudicate upon and settle all the question involved in the suit. In the light of this provision here I would discuss facts of case in hand. Admittedly the suit is for partition and separate possession. As pointed out by learned advocate for defendant No. 1 and 3, the plaintiffs have not contended that, they have let the suit 1A property in plaint Exh.1. However, in their say to application under consideration though they have not mentioned name of lessee but they have not denied it as well. As I mentioned earlier suit is for partition and separate possession. The defendant filed their say and have resisted the suit. As per contention of the defendants suit 1A property is ancestral joint family property of the plaintiff and defendants. There are also having 1/4th share in it. Proposed defendant No. 6 is not the member of the joint hindu family of the plaintiffs and the defendants. Therefore, presence of proposed defendant No. 6 before the court is not necessary in order to enable the Court effectually, and completely to adjudicate upon and settle all the question involved in the suit. As suit is for partition and if defendant succeeds in proving their defence then they will get share in suit 1A property also and they may claim mesne profit as well. So the proposed defendant No. 6 is not necessary party to the suit at the most he can be examined as witness in this matter. Hence, in view of this discussion I pass following order.

**ORDER**

1. Application Exh.90 is hereby rejected.
2. Costs in cause.

Date:-31/07/2017

[Sou. V. P. Gaikwad]  
Jt. Civil Judge, Sr.Division, Karad.