

MHYA150007022021



ORDER BELOW EXH. 21 IN R. C. S. No. 30/2021
(Passed on 01.08.2025)

This is an application filed by the defendants for framing of additional issues in respect of non-joinder of necessary party under Order 14 Rule 5 of the Code of Civil Procedure.

2. The defendants stated that, the suit filed for partition, separate possession. The plaintiff not added all necessary parties in this suit. The real brother and sister of the plaintiff are necessary party in the present suit but, the plaintiff not added them as defendants in this suit.

3. Further the defendants stated that, the defendants filed application below Exh.9 for addition of necessary parties but, the said application is rejected. Thereafter, the defendants approached to the Hon'ble High Court and filed writ petition No. 622/2024. The Hon'ble High Court granted permission to file application for framing of additional issue in respect of non-joinder of necessary party.

4. The defendants stated that, in their written statement at Exh. they specifically contended that, the necessary parties have not been added in the present suit. In such circumstance it is necessary to frame issue in respect of necessary **parties**.

5. The plaintiff filed his say below Exh. 23 and submitted that, the application is not proper. The plaintiff stated that, in the

paragraph No.2 of the plaint mentioned that, Ramabai Gulhane, Nirmala Jirapure, Jijabai and Parvati Gulhane have been relinquished their share and right in the favour of the plaintiff and his brother. Thereafter, mutation entry No.102 is registered on 21.09.1984. Further, the plaintiff stated that, the sisters have relinquished their share in the favour of the plaintiff and his brother in the year 1984. Both the sisters of the plaintiff have relinquished their share in written. Hence, both sisters are not necessary parties in the present suit.

6. Further, the plaintiff stated that, Prabhakar Gulhane and Mahadeo Gulhane have relinquished their share in the favour of defendant No. 1 and 2. Hence, they also not necessary parties in the present suit. The plaintiff have denied other contentions of the application. Accordingly, the plaintiff prayed to reject the application.

7. At the outset it is worthwhile to discuss here the provision regarding framing of issues of the Code of Civil Procedure. Provision regarding framing of issues as under -

**Order 14 Rule 1 of the Code of Civil Procedure-
Framing of issues.**

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in

Order to show a right to sue or a defendant must allege in Order to constitute his defence.

(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

- (a) Issue of fact,
- (b) Issue of law.

8. It is also necessary to discuss provision regarding non-joinder and mis-joinder of party. Provision regarding non-joinder and mis-joinder of party as under-

Order 1 Rule 13 of the Civil Procedure Code provided that, objections as to non-joinder or mis-joinder. All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issue are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

9. On perusal of record it appears that, the present suit is filed for partition and possession. The defendants filed this application and stated that, real brothers and sisters of the plaintiff are necessary parties in the present suit. The plaintiff contended that, the sister and brother have relinquished their rights and

shares. Hence, they are not necessary parties.

10. On perusal of written statement along with counter claim at Exh. 15. It appears that, there is a mentioned about that, necessary parties are not added in the suit.

11. It is a clear from the provision of the Order 14 Rule 1 of the Code of Civil Procedure that, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. If there is no specific denial, the question of framing issue does not, generally, arise.

12. In the present suit, it is the contention of the plaintiff that, his brother and sister have relinquished their rights in respect of the suit property. Hence, they are not necessary parties. However, the defendants specifically denied in their written statement that, the brother and sister of the plaintiff relinquished their share of the suit property. It is a also necessary to mention here that, the plaintiff has not filed any registered documents regarding the relinquishment deeds.

13. In such a situation, it seems necessary to frame issues regarding non-joinder of necessary parties. Also, if the issues frame regarding the necessary parties, it will not prejudice, suffer or damage to the plaintiff. Furthermore, matter is at initial stage, trial yet to commence.

14. According to the plaintiff, his sisters and brothers have been relinquished their share of the suit property. In such a situation the plaintiff will have an opportunity to present evidence regarding

the above mentioned matter at a time of evidence. At this initial stage considering only mutation entry, it is not just, proper and correct to come to the conclusion as to whether or not the rights and shares of the plaintiff's sisters and brothers have been relinquished in the suit property.

15. It is my humble opinion that, a full-fledged trial is required to arrive at a conclusion as to whether or not the plaintiff's sisters and brothers relinquished their rights and shares in the suit property ?

16. In the light of above discussion, considering the pleading of the parties and the above provisions I am of the opinion that, it is necessary to frame additional issue in respect of non-joinder of necessary parties. Accordingly, the application is liable to be allowed. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. Additional issue be framed regarding non-joinder of necessary parties as whether the suit is bad for non-joinder of necessary parties ?
3. Above additional and recast issue reproduce along with issues framed at Exh. 18.

(Order pronounced in the open Court.)

Ner,
Date : 01.08.2025

(G. C. Fulzalke)
Civil Judge, Junior Division,
Ner, Dist. Yavatmal.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word to word as per the original order.

Name of Stenographer	:-	Ku. B. N. Nare (Grade-III)
Court	:-	Civil Judge Jr. Dn., Ner.
Date	:-	01/08/2025
Order signed by the Presiding Officer on	:-	02/08/2025
Order uploaded on	:-	02/08/2025