

**IN THE COURT OF SMALL CAUSES AT MUMBAI**

**ORDER BELOW EXHIBIT-139**

**IN**

**R.A.D. SUIT NO.231 OF 2002**

Messers Atul Arun Printing Press a firm ..Plaintiffs

V/S

Messers S K Kabbur Private Limited and Ors. ..Defendants

AND

Smt. Anuradha Anant Umarani alias Jayashree ..Applicant/Intervener  
(Proposed  
Defendant No.3)

Mr. Upendra Mahadik, Advocate for the applicant/intervener

Mr. D. C. Mehta, Advocate for the defendants

**Coram:- M. S. Agrawal, Judge**

**Court Room No. 8**

**Dt.15.09.2022**

**ORDER**

1. The application is filed by the intervenor for joining her as party to the suit. The applicant is declared as co-owner of the suit premises. She is a legal heir of the deceased Radhabai Kabbur, the co-owner of the suit property in view of Consent Terms dated 04.02.2013 before the Hon'ble High Court in Notice of Motion No.76/15. The applicant filed earlier application for payment of municipal taxes out of the rent amount. The application below Exh.34 in RAD Suit No.230 of 2002 was rejected on 07.12.2017 on the ground that the applicant is not party in the proceeding. The respondent No.1 has surrendered all its right and title in the suit property in favour of the legal heirs of the deceased Radhabai. The plaintiff has been declared as tenant of all new owners of the suit property. The memorandum of

understanding and Power of Attorney dated 26.06.2001 and 22.10.2001 executed between respondent Nos.1 and 2 has come to an end. If the application is not allowed then the applicant will cause irreparable loss. The plaintiff is depositing monthly rent in the Court. The plaintiffs have filed the present suit for declaration of tenancy.

2. The applicant has filed application i.e. notice of motion No.682 of 2018 before the Hon'ble High Court for appointment of Court Receiver. The the Hon'ble High Court has appointed Court Receiver. Therefore application be allowed.

3. Defendants have filed say vide Exh.147 and denied the contents of the application. There is no provision to seek any intervention for joining him as party. Applicant has sought relief which is legally not permissible. There is no cause of action to file the application. Hence, application is liable to be rejected.

4. Heard argument on behalf of plaintiffs and defendant No.1. The applicant remained absent continuously and therefore there is no argument on behalf of the applicant.

5. The defendant Nos.1 and 3 relied on the judgment of Hon'ble Supreme Court.

**(i) Rajkumar Gurawara (dead) through LRs V/s. S. K. Sarwagi and company. Pvt. Ltd. reported in (2008) 14 SCC 364.**

6. It is held by Hon'ble Supreme Court that amendment must be sought before commencement of trial. It will not cause prejudice to opposite party. The amendment must be proper. The grant of the application for amendment shall be subject to some conditions i.e. the

nature of the pleading is changed by permitting amendment, the amendment would result in introduction of new cause of action and it will defeat the law of limitation.

**(ii) Revajeetu Builders and Developers V/s. Narayanaswami and Sons and Ors. reported in (2009) 10 SCC 84**

7. The Hon'ble Supreme Court has held that to allow or to refuse the amendment, is discretionary power of the Court. It must be exercised judicially and with proper care. The amendment must be bonafide, legitimate and honest. It should not be malafide and dishonest. The amendment must be necessary for determination of real question in controversy. The Court should consider the principle of prejudice or injustice on the other side. The amendment should not change the nature and character of the case. On this principle I am deciding the said application. The said application is filed under Order I Rule 10 of Code of Civil Procedure. The judgments cited by the learned Advocate for the defendant are relating to Order VI Rule 17 of Code of Civil Procedure.

8. The applicant has filed consent terms in Suit No.2270 of 2008 dated 21.01.2013. The suit is filed by Prabha Kabbur and Ors. V/s. Ramesh Siddhanti and Ors. It is their family dispute between two branches. In that suit the present defendant M/s. S. K. Kabbur Pvt. Ltd. is also defendant No.3. It is also signed by defendant No.3 i.e. present defendant No.1. It is mentioned that the Managing Director of the company i.e. defendant No.3 hereby withdraw the Power of Attorney dated 22.10.2001 executed by M/s. S. K. Kabbur Pvt. Ltd. in favour of Kalpataru Ltd. and Kalpataru Home Ltd. There is no any

declaration about tenancy rights in Consent Terms. It is also mentioned that the party shall collectively explored the possibility of amicable settlement with Kalpataru Ltd. who is defendant No.2 in the present suit. It is further mentioned that the order in terms of this clause shall be without prejudice to the rights of Kalpataru Ltd/Kalpataru Homes Ltd. The Consent Terms are not signed by the defendant Kalpataru Homes Ltd. Therefore Consent Terms are not binding with defendant No.2. The present applicant is daughter of deceased Radhabai Kabbur who is not party to the litigation before the Hon'ble High Court. The applicant has also filed certificate of transfer of immovable property.

9. The applicant further relied on Consent Terms in Notice of Motion No.76 of 2015. These are in between Vidula Suhasrao Sidhanti and Ors. V/s. Smt. Prabha Narayan Kabbur and Ors. The applicant is daughter of Smt. Prabha Narayan Kabbur. The matter is settled in between them. The Court Receiver is appointed in respect of the suit property. The applicant further relied on order below Exh.34 passed in RAD Suit No.230 of 2002. It is mentioned that as per the Consent Terms the applicant is having 20 % share in the suit property and she is not party to the present suit. But 80 % share in suit property belongs to others. Hence, the entire amount cannot be handed over to the applicant alone i.e. rent amount. It is not mentioned that the applicant has to apply her name as a party to the present proceeding. The other documents are various letters, some cheques issued in the name of Kalpataru Home Ltd., one order regarding deposit of arrears of rent passed in RAD Suit No.231 of 2002, the notice of municipal

corporation for recovery of taxes, the order of the Hon'ble High Court regarding Court Receiver and the proceeding of the meeting after appointment of Court Commissioner. In all the documents filed by the applicant, it is not mentioned that the plaintiff has declared as a tenant by the Hon'ble High Court and therefore, contents of the application are not trustworthy. I think that the present suit is for declaration of tenancy right and there is no role of the applicant to intervene the proceeding. She failed to prove that she is necessary party for deciding the suit on merit. In view of Consent Terms other heirs of deceased Radhabai Kabbur are also having share because Radhabai was having only 20% share in the suit premises. She is not necessary party for adjudication of the suit claim on merit. The learned Advocate for the plaintiff shown me the order which has been passed in RAD Suit No.230 of 2002 and it is not binding on me. Therefore, the present application for addition of the applicant as defendant is not tenable. The amendment if allowed, it will cause prejudice on substantial rights of defendant. Therefore the application cannot be allowed. It is filed at belated stage. Consent Terms have been passed in the year 2013 and 2015. The said application has been filed in the year 2019. Hence, the application is liable to be rejected. I proceed to pass following order.

**ORDER**

The application vide Exh.139 is hereby rejected.

**Date : 15.09.2022**

**(M. S. Agrawal)  
Judge, C. R. No. 8**