


MHAH050006532021 	<b><u>ORDER BELOW EXH.37 IN</u></b> <b><u>R.C.S. NO. 198/2021</u></b> <b><u>Kishor Malhari Vs Bhausahab Khandu</u></b>
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This is plaintiff/counter-claim defendants application for amending their written-statement(Exh.25), given towards the counter-claim(Exh.14). Perused the application with affidavit(Exh.38) and the say of counter-claimants(Exh.39).

02. Plaintiffs/counter-claim defendants, purpose to amend their written-statement(Exh.25) submitting that previously counter-claimant nos. 01 to 03's father and counter-claimant no. 04's husband, deceased Khandu Tukaram Chitalkar, has filed one suit bearing R. C. S No. 454/1978, in the court of Civil Judge Junior Division, Shrirampur, for the possession of suit-property. Said suit was dismissed.

03. Based on this suit and its dismissal, plaintiff/counter-claim defendants propose to amend their written-statement(Exh.25) and raise the legal defense of Res-judicata. Plaintiff/counter-claim defendants submit that their application is tenable and same to be allowed.

04. Counter-claimants in their say(Exh.39) have contended that the contents in the application are false. The purpose of the application is to prolong the suit. The purposed amendment is not within limitation and that, it would affect the defense of defendant/counter-claimants. They pray for rejection of the application.

05. Initially, plaintiffs suit is for perpetual injunction with declaration, in respect of suit immovable property. The proposed amendment gives rise to the legal issue of Res-judicata. Though, defendant/counter-claimants oppose the application, the proposed legal issue would be fruitful for the complete adjudication of the suit on merit, both legally and factually. Apart, no hardship would be caused to defendant/counter-claimants if the amendment is allowed, as they would be having the opportunity to lead their contentions against the proposed legal defensive issues of Res-judicata.

06. Therefore, the application being tenable, in interest of justice, towards justifiable adjudication to the suit, I pass following order :-

**ORDER**

01. Application is allowed.
02. Plaintiff/counter-claim defendants, to carry out amendment in their written-statement(Exh.25) within 14 days from the date of the order.
03. The proposed amendment giving rise to the legal issue, no order as costs.

Date: 06/12/2023

(Vinay B. Kamble)  
Jt. Civil Judge Sr. Division,  
Shrirampur.

