

**ORDER BELOW EXH.44**  
**(Dated 16.03.2023)**

The instant application is filed by the plaintiff under Order 6 Rule 17 of Code of Civil Procedure.

2] It is submitted by the plaintiff that the plaintiff has in para no. 2 of the plaint has described the suit property as Gat No. 149 ad-measuring 3H 55R. However, Gat No. 149 is ad-measuring 3H 44R and cultivable land 0H 3R. Therefore, the total area is 3H 47R. Out of the above property plaintiffs and defendants have 2H 63R of joint family property. Therefore, plaintiff want to correct the area by replacing 3H 55R to 2H 63R. It is further submitted that, while filing the suit, the plaintiff has not added the property located at Mouje Injegaon, bearing Gat No. 108 having an area of 0H 25R. Similarly, Suit property bearing Gat No. 1-E having an area of 0H 20R and Gat No. 24-A having an area of 0H 24R is not included in the present suit. Furthermore, the plaintiff has not added house property no. 130 having an area of 49 x 32 feet. The plaintiff by filing present application wishes to carry out necessary amendment and desires to add the above suit properties.

3] The defendant no. 1 to 4 have filed their reply and has opposed the application on the ground that the suit valuation is

likely to be enhanced and the plaintiff has not deposited the necessary court fees. It is also contended that at this juncture new properties cannot be introduced as the valuation of the suit will increase and which will change the nature of the suit.

4] Heard the counsel for both the parties and with their assistance perused the record.

5] At the outset, it needs to be emphasized that issues are yet to be framed and trial of the case is yet to commence. The present suit is for partition and separate possession. It is axiomatic that in partition suit all the ancestral properties and all the necessary parties are to be added for it to succeed. Without inclusion of all the ancestral or joint family properties the suit for partition is not tenable. The proposed amendment pertains to the fact in issue between the parties. The proposed amendment is necessary for deciding the real question in controversy between the parties. If the amendment is not allowed, it will lead to multiplicity of the proceedings and will create problem at the time of execution of decree. It is well settled that the suit has to be so framed so as to, afford ground for final decision and to prevent further litigation concerning them. The proposed amendment is just, bonafied and clarificatory in nature and will not change the nature of suit. No prejudice would be caused to the plaintiffs, if the application is allowed. The proposed amendment is necessary for proper, fair and effective disposal of the matter on

merits. However, the existence of properties mentioned in para no. 1 & 2 was withing the knowledge of plaintiff and therefore, despite knowledge those were not included in the suit. As there is delay due to the fault of the plaintiffs cost of Rs. 200/- needs to be imposed on the plaintiffs. Hence, there is no impediment in allowing the application. In the result, I pass the following order-

**ORDER**

- 1] Application filed below Exh.40 is allowed subject to cost of Rs. 200/- payable by plaintiffs to the defendants.
- 2] The plaintiffs are directed to carry out proposed amendment mentioned in Para no. 1 & 2 of present application and also supply copies of amended plaint on or before 14 days from today.

Date : 16/03/2023  
Place: Parli Vaijnath.

(Anupam S. Sharma)  
Jt. Civil Judge Junior Division  
(Court No.2) Parli Vaijnath.

**CERTIFICATE**

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

Sd/-  
Akash B. Kabne  
Stenographer Gr-III

**Dictated on** : 16.03.2023  
**Transcribed on** : 16.03.2023  
**Checked & Signed on** : 16.03.2023