



Order below Exh. 52 in
Regular Civil Suit No. 228/2017
CNR Number is MHKO050022512017
(Passed on 07.12.2022)

The plaintiff has filed an amendment application under Order VI Rule 17 of the Code of Civil Procedure.

02. It is contended that, the present suit is filed for declaring the notice issued by Tahasil Office, Hatkanangale is null and void and illegal. It is further contended that, in Ichalkaranji, Upper Tahasildar Office has been started and the concerned village i.e. Korochoi has been included in the jurisdiction of Upper Tahasildar. Therefore, the Upper Tahasildar Court has issued a notice to the plaintiff under section 5(1) of Mamledar Courts Act, 1906. Therefore, the cause of action arose to the present suit. Therefore, the Upper Tahasildar has been made party to the present suit. Before this, Tahasildar office, Hakanangale had issued a notice dated 10-07-2017 having Outward No. 5050/2017 and the same has been challenged in the present suit already. But as newly created office of Upper Tahasildar has issued notice again on the same subject matter dated 28-02-2022 Outward No. 2/2022. Therefore, the plaintiff has felt necessity of seeking declaration of that notice to be null and void and illegal also. Hence, he prayed for adding said prayer in the present suit as mentioned on last page i.e. page No. 8 of the present application (Exh.52).

03. The defendants No. 1 and 2 opposed the application contending that, the application is not tenable and against the law. Already present suit is filed for declaring the notice to be illegal. The

another notice issued by Upper Tahasildar is not having concerned with the subject matter of suit property. Therefore, that cannot be declared to be illegal. Further said that, Mamledar is independent court and Civil Court is barred to take any cognizance regarding that. The present matter is pending for framing of issues. This is a subsequent event of issuing of notice by Upper Tahasildar. Therefore, no any such amendment can be carried out. The newly issued notice by Upper Tahasildar is different subject, therefore, cannot be added in present plaint by way of present amendment. Hence, prayed for rejection of the application.

04. It is seen that, previously Tahasildar, Hatkanangale had issued notice to the plaintiff outward No. 5050/2017 and that has been challenged in present suit. But later the another notice outward No. 02/2022 came to be issued by Upper Tahasildar, Ichalkaranji and that is sought to be set aside by carrying out amendment in the present suit. It is the contention of the defendant that, the subsequent notice is not part and parcel of the original subject matter rather it is a different subject. But the plaintiff contends that, subject matter is the same. But as newly office is created above the Tahasildar i.e. Upper Tahasildar, they freshly issued notice on the same subject matter outward No. 02/2022. Hence, it needs to be added in the present suit for declaring it to be illegal. I have gone through the entire record produced on record, and found that subsequent notice is also issued to the plaintiff regarding the same subject matter. It covers the present suit dispute. I do not think any adverse impact would be on the plaint nature. The nature of the suit would not be changed. I do not find any substance in the contention

of the defendants. A fair opportunity for fair trial can be given by way of amendment. It cannot be denied and no prejudice would be caused to the defendants, if amendment is granted. Hence, the amendment will have to be granted. Hence, I pass the following order :-

ORDER

1. Application (Exh.52) stands allowed.
2. The plaintiff is allowed to carry out amendment in the plaint (Exh.1) as mentioned in the application.
3. Amendment be carried out within stipulated time and amended copy be produced on record.

Date : 07.12.2022

(B. T. Yengade)
Jt. Civil Judge Senior Division,
Ichalkaranji