

MHKO100002012011

REGULAR CIVIL SUIT NO. 39/2011



Sarswati Shivsing Hajare & Ors.

Vs.

Subhash Harising Shildar.

ORDER BELOW EXHIBIT NO. 147

This application is filed for amendment in plaint under Order VI, Rule 17 of the CPC.

02. It is stated in this instant application that, present suit is filed for partition, declaration and injunction against the defendant. Defendant has denied the all contentions in plaint by filing written statement. Except the plaintiff and defendant, nobody has right in the suit properties. But, in Gat no.394 situated at Village-Hebbal. Proposed defendant no.2 and 3 have recorded their name in 7/12 extract on the basis of mutation entry no.4264 and 4392 respectively. They have constructed new building in above said gat number and Grampanchayat Hebbal has been passed Resolution No.128 in their favours and recorded their names in assessment extract on dated 21/02/2023.

03. Plaintiffs came to know about the above said resolution from the information received in Right to Information Act. Therefore, plaintiffs want to implead Dattasing Vitthalsing Shiledar and Akshay Udhavsing Shiledar as proposed defendant no.2 and 3 in present suit. As well as to make additional averement in plaint and prayer clause. If, this application will allow then nature of suit cannot be changed as well as no prejudice would be caused to defendant. Hence, prayed to allow the application.

04. On the other side, defendant has strongly object to this application. The Ld. Advocate of defendant stated that, plaintiffs are lingering the proceeding by moving such type of application again and again in this matter. Prior to this, they had filed an application Exh.72,74,79,86 and 134. Some applications are rejected and others are not pressed. Same application was filed vide Exh.134, it was rejected on 01/10/2024, therefore, this application is not maintainable with same prayer. Hence, prayed to reject the this application. In support of his say Ld. Advocate has filed 6 case laws with list Exh.152 on record.

05. Heard both side at length. This application has filed to implead the proposed defendant in present suit. In support of this application, documents are filed with list Exh.149 on record. Documents shows that, the suit property Gat No.394 is recorded in the names of proposed defendant no.2 and 3 by way of mutation entry no.4264 and 4392 respectively. On the basis of that, their names are came on 7/12 extract. They have constructed upon that land and applied to enroll their name in assessment extract. Accordingly, Grampanchayat Hebbal has enrolled their name by passing resolution no.128 on dated 21/02/2023 in assessment extract. Plaintiff had applied under Right to Information Act. Accordingly, they received this information on dated 30/01/2025 on first time. Therefore, this application has made. Prior to this same application was moved vide Exh.134 as per submission of Ld. Advocate of defendant. It was rejected, but I am of the view that, present suit has filed for partition, declaration and injunction of the suit properties. Gat no.394 is one of the suit property, which is recorded in the name of proposed defendant no.2 and 3. Cause of action is arise against these proposed

defendants. Therefore, they are necessary parties in present suit. Plaintiffs have sought additional prayer against the proposed defendants, which has to be added in this plaint, otherwise plaintiffs will be deprived from their legal right in gat no.394 as they stated. Matter is on hearing stage. Evidence of plaintiffs is about to start before that, necessary amendment should be required. The case laws filed by Ld. Advocate of defendants are not assisted in this case, because the facts and circumstances in those cases are totally different. Hence, in view of above discussion I am of the opinion that, this application required to allow. In result, I pass following order.

-: ORDER :-

01. The application is allowed subject to impose cost of Rs.500/- be paid to defendant on or before next date.
02. Plaintiff is directed to carry out necessary amendment in plaint within 14 days from today and also supply the amended copy of plaint accordingly.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 12/09/2025.

(S. D. Mehta)
Jt. Civil Judge, Junior Division,
Gadhinglaj.