



Shivanand Alias Shivgonda Satyappa Mirje etc.04 Vs
Housabai Shivmurti Belvi (Decesed)

CNR - MHKO130005452024

ORDER BELOW EXH. 24 IN R.C.S.No. 96/2024

1. This is an application vide Order 6 Rule 17 of Civil Procedure for amendment in the plaint at the instance of plaintiff. By way of instant application the plaintiff has prayed for amendment in plaint in the form of mandatory injunction. It is submitted that at the time of institution of suit the present suit was filed for perpetual injunction i.e. to restrain the defendant from carrying out construction. It is submitted that during the pendency of suit the defendant has carried out construction of the suit property.

2. Since the defendant has constructed over the suit property the prayer of mandatory injunction needs to be substituted. It is submitted that if the application for amendment is allowed it will not change the nature of suit and it will help in deciding the real controversy between the parties.

3. The defendant vide his say at Exh. 25 has opposed the application. It is submitted that the plaintiff has filed plain suit for perpetual injunction. The plaintiff has not made any prayer for the partition of suit property. Therefore even if the amendment application is allowed and the relief of mandatory injunction is substituted it will not decide the real controversy between the parties.

4. Heard learned counsel for plaintiff and learned counsel for defendant. Perused the record. Suit of plaintiff is for perpetual injunction of suit properties specifically mentioned in paragraph no. 1 of the plaint. By way of instant suit plaintiff has prayed to restrain the defendant or any person acting on behalf of defendant

to restrain from carrying out construction or any repairs in the suit property having joint interest. The suit is simplicitor for perpetual injunction. The plaintiff has contended that during pendency of suit the defendant has illegally completed construction of the house. To that effect pursis is filed at Exh. 23 on record. Undisputedly in view of completion of construction the relief sought by plaintiff in the plaint has become infructious. The plaintiff in this plaint paragraph no. 3 has stated that with respect to suit property RCS no. 19/2012 for partition and perpetual injunction is pending. This fact goes to show that partition of suit property is yet to be effected and plaintiff and defendants have joint interest in the suit property.

5. In such circumstances even if the amendment application is allowed and the prayer of perpetual injunction is substituted for the prayer of mandatory injunction it will not decide the real controversy between the parties. It will only prolong the dispute. In such circumstances plaintiff has not made out his case for grant of amendment in the plaint as prayed in the application.

6. The application is liable to be dismissed. Hence, I pass following order.

Order

1.	Application is rejected.
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Kagal
Date:- 04/07/2025

(A.B.Madake)
Civil Judge Junior Division,
Kagal.