

R.C.S.No. 42/2009
Kaluram Gangaram Phuge & Ors.
Vs
anand Sayaji Landage & Ors.

ORDER PASSED BELOW APPLICATION (EXH. No. 77)
(CNR NO. MHPU09-002344-2009)

Original defendants have filed an application under Order 6 Rule 17 of the Code of Civil Procedure.

2. It is contended by original defendants that, they have filed the counter claim. By way of proposed amendment they intend into bring on record that on 09/03/1931 Ganpati @ Ganpat Tushaba Landge mortgaged Gat No. 138/1/1 to Gangaram Govind Phuge for the mortgaged charges of Rs. 99/-. Thereafter, he had return the said amount. Accordingly, he had applied for deleting the mortgaged entry on 7/12 extract. On 01/03/1969 by way of order No. SR/48/69 of Tahasildar Haveli has deleted the names of Gangaram Govind Phuge over gat No. 138/1/1. But inadvertently it's effects also given to gat No. 138/5 and name of Gangaram Govind Phuge has been shown on the 7/12 extract. Therefore, original plaintiffs have without any rights shown their possession over Gat No. 138/5 admeasuring 41R. But original defendants are the owner of the said gat No. 138/5 admeasuring 41R. They wants to recover the possession of it.

3. Per contra, original plaintiffs have filed their reply (Exh. 84) that original defendants have claim the possession

over Gat No. 138/5 along with declaration that the possession of original plaintiffs over it is illegal.

4. Perused the application and say filed. Heard the learned advocate for both sides. On the perusal of counter claim of original defendants it seems that, in the counter claim original defendants have seek the declaration that the registered mortgaged deed No. 519/1931 dated 09/03/1931. But by way of proposed amendment in para No. 7(A) they intended to plead in a counter claim that after the deleting the name of on payment of mortgaged fees over Gat No. 138/1/1 the name of Gangaram Govind Phuge could not deleted over Gat No. 138/5 admeasuring 41R. As per the 7/12 extract the name of Gangaram Phuge shown on the revenue record. Therefore, original plaintiffs are in unlawful possession Gat No. 138/5. Apart from it, the proposed amendment if allowed then in the prayer clause 11(C)(1) also be permitted to amend that original defendants are entitled to recover the possession of Gat No. 138/5 admeasuring 41R.

5. On the perusal record it seems that, te counter claim came to be filed on 10/04/2019. In the said counter claim original defendants have though claim the relief in respect registered mortgaged No. 519/1931 dated 09/03/1931. But could not seek the relief regarding recovery of possession of Gat No. 138/5 admeasuring 41R. The proposed amendment will not

change the nature of the suit. But it could not be allowed then it will create a multiplicity of the suit. No prejudice caused to original plaintiffs if the proposed amendment is allowed. Therefore, it is fit case to allow the application. Hence, I proceed to pass the following Order -

ORDER

1. Application is allowed subject to cost of Rs. 1000/-.
2. Original defendants are permitted to carry out necessary amendment by adding para No. 7(A) along with the relief in the prayer clause No. 11(C)(1) of the proposed amendment and file the amended copy till next date.

Dated : 25.06.2025.

(N. R. Gajbhiye)
Civil Judge, Junior Division,
Pimpri, Pune.

CERTIFICATE

I affirm that the contents of this P.D.F file Order/ Judgment are the same, word to word, as per the original Order.

Name of the Stenographer :- Smt. B. S. Jamkhandi (Karnikar)

Name of the Court :- Shri. N. R. Gajbhiye
C.J.J.D. and J.M.F.C. Pune.

Order / Judgment Date :- 25/06/2025

Order / Judgment signed by
the Presiding Officer on :- 25/06/2025

Order uploaded on :- 27/06/2025