

MHRT110005342014

R.C.S. No.36/2014

Dattatraya V/s. Vilas and Ors.

ORDER BELOW EXH.186***(Passed on 21.11.2025)***

The present application is filed by the original defendants (mentioned in the cause-title of the plaint) for impleading the persons mentioned in the counter-claim as defendants, along with the legal representatives of late Mr.Sudhakar Sitaram Gadade.

02. Prior to arriving at a decision on this application, this court would like to state here that, while/when the common order on exhibit numbers 178, 180 and 182 came to be passed (and even prior to that), the learned advocate for the defendants did not point out/submit fairly to this court that the persons named in the counter-claim are not reflected/made parties in the cause-title of the plaint.

03. Further, it is a matter of record and fact that, no order of impleading the persons stated by the original defendants, in the counter-claim, appears to be anywhere on the written statement/counter-claim. Hence, because of unclear submissions (oral) of the defence side as well as inadvertently/mistakenly, the applications at Exhibit nos.178, 180 and 182, came to be allowed.

04. From the same and in the light of the record, this court states that, the said order (because of the above-

mentioned things/reasons/aspects), is an error apparent on the face of the record, which this court noticed and got clarified from the defence when the present application came to be filed/submitted on record. Therefore, this court clarifies over here that, the common order passed below exhibit nos.178, 180 and 182, is hereby recalled and therefore it would not now remain in operation/be of any use to the defence (more particularly, for the reasons mentioned over here and the final order of this court on this application in the below-stated operative part).

05. Now, coming to this application, this court once again states that, the defence has wisely/cleverly mentioned some of the things (which were in fact not done on record because of negligence of both sides, for almost a period of 8 to 10 years), in the present application, just to gain sympathy from/of this court. From the overall application, it appears that, the defence is trying to fill up the lacunae in their case, by taking support of the things/factors, which came up in the verbal conversation with this court, by the learned advocates for both sides.

06. However, such kind of tactics, that too, after a considerable period of time (in an almost 10 year old matter), is unacceptable. This is also because, the defence have themselves admitted in the present application, that, the fact of the persons mentioned in the counter-claim, being not added as parties in the original plaint, came to their notice only when the order dated 18.07.2025 came to be passed by

this court. This also shows carelessness on the part of the defence, that too, when they are conducting the case from last 10 years or so.

07. Apart from this, the defence has stated in this application, many things regarding possession, ownership and evidence on record. Further, as stated in the counter-claim, in this application also, the defence is making the same statement as, the persons stated in the counter-claim are added as defendants by them (assuming as of right that they are added so, without any order of the court as regards the same). However, no such amended plaint/any order to that effect appears to be on record. Beyond this, why they could not find out/realize the present loophole in the huge span of last 10 years, is nowhere clarified/explained by the defence, in the present application.

08. In other words, there appears to be lack of due diligence on their part. Further, what prevented them/was beyond their control, during such a lengthy period of the trial of the case, is also nowhere mentioned with sound reasons/justifiable grounds in the application. Hence, this court finds that, if the present application is allowed now, having regard to the stage of the case i.e. final arguments, possibility of relegating the suit to backward stages, cannot be ruled out. This will certainly be a prejudice to the other side, which is also on the same footing, as regards the time that has elapsed.

09. Just to add, the plaintiffs have also objected to this application on the grounds/reasons (though not in full) as stated above by this court. Therefore, looking to the rival submissions, the conduct of the defence i.e. the manner in which the applications (are presented and drafted), coupled with the aspect of not submitting full/complete background of the situation on record as well as the time that has elapsed, this court does not find it just and proper, to allow the present application. Moreover, the defence needs to be saddled with costs for the way in which and the time after which the present application is submitted. However, as the order dated 18.07.2025 is now recalled by this court (for the reasons stated above), this court does not find it just and proper to pass any order as to costs. Resultantly, I proceed to pass the following order-

ORDER

1. The application is rejected.
2. No order as to costs.

Place - Guhagar
Date - 21.11.2025

(**Pratik V. Kapadia**)
C.J.J.D, Guhagar

Certificate

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

Name of Stenographer	Mr. Somnath J. Thorat, Stenographer Grade III
Name of Court	The Court of Civil Judge, (J.D.) and J.M.F.C, Guhagar
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