

ORDER BELOW EXH. 36 IN RCS NO. 406/2024
(MHST070038422024)

Laxmi Shivaji Gurav through P.O.A. --- Plaintiff.

Vandana Pradeep Gurav.

Vs.

Atmaram Rajaram Gurav & others --- Defendants.

The present application is filed by the plaintiff for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, “the C.P.C.”). Defendants No. 1A and 1B have filed their say at Exh. 39 and opposed the application. Perused the application and the say. Perused the record. Heard both learned Advocates.

2. The plaintiff has alleged that the present suit is filed for the relief of partition. The defendants have appeared in the matter. It is alleged that the defendants have constructed a new RCC house by demolishing the old house during the pendency of the suit. The village property Nos. 161 and 161/1 are recorded. Moreover, the plaintiff seeks to add a prayer for mandatory injunction as the defendants have installed a sewage pipe near the memorial of his parents. Hence, he has prayed to allow the application.

3. On the other hand, the defendants have contended that the application is false and that the nature of the suit will change if the amendment is allowed. They submitted that the partition of the suit property had already taken place in the year 1983. Defendant No. 1 has constructed a house in City Survey No. 270 and has been using village property Nos. 161 and 161/1 since the year 1986. The construction of the new house was completed in the month of August 2024. The pipeline has been laid underground. Defendant No. 1 is maintaining the

said memorial. The application has been filed only to harass the defendants. If the amendment is allowed, it will cause irreparable loss to the defendants. Therefore, the application deserves to be rejected.

4. The defendant has relied upon following authority :-

Ajendraprasadji N. Pande Vs. Swami Keshavprakeshdasji N.

Wherein, it is held that, “ *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial*”.

I have taken into consideration the ratio laid down in the above authority.

5. I have gone through the record. The suit is filed for the relief of partition. Defendants No. 1A and 1B have appeared in the matter but have not filed their written statement. Therefore, an order of “no written statement” was passed on 27/06/2025. The matter has proceeded *ex parte* against defendants No. 1C, 1D, and 2 to 9. The trial has not yet commenced. In a partition suit, it is necessary to include all the properties. Moreover, inclusion of the relief of mandatory injunction at this stage will not prejudice the defendants, as they have not put forth any defence.

6. In my view, the proposed amendment will not change the nature of the suit. The proposed amendment is necessary for determining the real controversy between the parties. Therefore, I am of

the opinion that the application is liable to be allowed. Hence, I pass the following order:

-: ORDER :-

- i) The application (Exh.36) is allowed.
- ii) Plaintiff shall carry out amendment within 14 days from the date of order.
- iii) The plaintiffs shall file on record amended plaint.

Place :- Karad.
Date :- 04/11/2025.

(Smt. A.V. Mohite)
3rd Jt. Civil Judge (Jr. Div.), Karad.
Tal. Karad, Dist. Satara.