

ORDER BELOW EXH. 39 IN SPL. C. S. NO. 1254/2014

1] Read application and say filed by plaintiff. Heard both the learned counsels.

2] This is application under Order 6 Rule 17 of CPC filed by plaintiff to carry out amendment to In short, plaintiff wants to add the beneficiary of the Will and codicil of deceased Satpal Malhotra dated 2/3/2007 and 15/2/2012, so also of Will of deceased Rajendra Mohini Satpal Malhotra dated 7/2/2014 in Plaint.

3] The suit is posted for arguments on application at exh. 5. Therefore, this is pre-trial amendment sought by plaintiff. Therefore, there is no hurdle of proviso of Order 6 rule 17 of CPC. It is undisputed that plaintiff has challenged the Will and codicil of deceased Satpal Malhotra dated 2/3/2007 and 15/2/2012, so also of Will of deceased Rajendra Mohini Satpal Malhotra dated 7/2/2014 in this suit. If Pooja Rohit Sood i.e. daughter of Baldeo Raj Malhotra is beneficiary of aforesaid Will and Codicil, it is necessary that Pooja is added party in this suit. The reasons in present application that due to oversight she was not added as party in this suit is supported by affidavit of plaintiff. Therefore, there is no reason to disbelieve plaintiff at this stage. As regards the position of merits of the pleadings, same cannot be looked into at this stage is settled legal position as is enunciated in case of *Mr. Abhay Arondekar V/s. Mrs. Hellen Prisca Correeia, 2013(6) ALL MR 712* relied upon by learned Advocate for plaintiff. The averments in present application if given thought will reflect that amendment sought is formal and necessary in present case. If application is allowed it will neither change the nature of the suit nor will prejudice defendants in any manner. On the contrary, allowing the application will help to decide the suit smoothly. Application of plaintiff therefore, deserves to be allowed. In the result, I proceed to pass following order.

ORDER

- [1] Application is allowed.
- [2] Plaintiff shall carry out proposed amendment within stipulated time.
- [3] Costs in cause.

Dt. 15-4-2017. (Smt. C.P.Jain)
5th Addl. Judge, Small Causes Court, Pune.

ORDER BELOW EXH. 41 IN SPL. C. S. NO. 1254/2014

1] Read application and say filed by plaintiff. Heard both the learned counsels.

2] This is application under Order 6 Rule 17 of CPC filed by plaintiff to carry out amendment in application of temporary injunction filed at Exh. 5. In short, plaintiff wants to add the beneficiary of the Will and codicil of deceased Satpal Malhotra dated 2/3/2007 and 15/2/2012, so also of Will of deceased Rajendra Mohini Satpal Malhotra dated 7/2/2014 in application at exh. 5.

3] The objection on behalf of defendants was that, plaintiff cannot apply Order 6 rule 17 of CPC to application at exh. 5.

4] Learned Counsel for plaintiff relied upon section 141 and 151 of CPC and observations in *Mr. Abhay Arondekar V/s. Mrs. Hellen Prisca Correeia, 2013(6) ALL MR 712*.

5] As regards applicability of section 141 of CPC the line in which learned counsel for defendants have argued, same cannot be countenanced. As per section 141 of CPC, the procedure provided in CPC with regard to suits is made applicable to all proceedings in any court of civil jurisdiction. The arguments of learned counsel for defendants that this provision is with respect to proceedings before consumer forum and other like tribunals is not acceptable. Present court is of civil jurisdiction. The word “proceedings” include “application”. Therefore, the procedure provided in CPC with respect to suits can be made applicable to present application. Even otherwise if this provision is not made applicable, then also this court has ample powers under section 151 of CPC. When there is no specific provision provided in the CPC, this court can invoke section 151 of CPC. As discussed above, section 141 of

CPC can be made applicable . Therefore, there is no need of invoking section 151 of CPC. Under section 141 of CPC, the present application of plaintiff is tenable.

6] The suit is posted for arguments on application at exh. 5. Therefore, this is pre-trial amendment sought by plaintiff. Therefore, there is no hurdle of proviso of Order 6 rule 17 of CPC. It is undisputed that plaintiff has challenged the Will and codicil of deceased Satpal Malhotra dated 2/3/2007 and 15/2/2012, so also of Will of deceased Rajendra Mohini Satpal Malhotra dated 7/2/2014 in this suit. If Pooja Rohit Sood i.e. daughter of Baldeo Raj Malhotra is beneficiary of aforesaid Will and Codicil, it is necessary that Pooja is added party in this suit. The reasons in present application that due to oversight she was not added as party in this suit is supported by affidavit of plaintiff. Therefore, there is no reason to disbelieve plaintiff at this stage. As regards the position of merits of the pleadings, same cannot be looked into at this stage is settled legal position as is enunciated in case of *Mr. Abhay Arondekar V/s. Mrs. Hellen Prisca Correeia, 2013(6) ALL MR 712* relied upon by learned Advocate for plaintiff. The averments in present application if given thought will reflect that amendment sought is formal and necessary in present case. If application is allowed it will neither change the nature of the suit nor will prejudice defendants in any manner. On the contrary, allowing the application will help to decide the T.I. application at Exh. 5 smoothly. Application of plaintiff therefore, deserves to be allowed. In the result, I proceed to pass following order.

ORDER

- [1] Application is allowed.
- [2] Plaintiff shall carry out proposed amendment within stipulated time in application at exh. 5.
- [3] Costs in cause.

(Smt. C.P.Jain)

Dt. 15-4-2017.

5th Addl. Judge, Small Causes Court, Pune.

CERTIFICATE

I affirm that the contents of this PDF file are same word for word as per original judgment.

Name of steno	:	M.U.Bandiwadekar
Name of Court	:	Ms. C.P.Jain, V Addl. Judge, Small Causes Court, Pune.
Date	:	15-4-2017
Judgment signed by PO on	:	-4-2017
Judgment uploaded on	:	24-4-2017