



ORDER BELOW EXH. 37 IN
REGULAR CIVIL SUIT NO. 711/2023

Smt. Milan Jadhav Vs. Smt. Malati Pisal etc. 6

The plaintiff has filed a present suit for declaration and perpetual injunction. Wherein the present application is filed by the plaintiff under Order XII, Rule 8 of the Code of Civil Procedure (hereinafter referred to as CPC) for giving a direction to the defendants No. 1 and 2 to produce the original will deed of defendant No. 1 dated 10/11/2016.

02. The defendants No. 1 and 2, by filing their say at Exh. 39, denied all the contentions of the plaintiff. They specifically stated that the will deed of defendant No. 1 is not in possession of defendant No. 2. They further stated that the will deed is a private document. Therefore, in the lifetime of the defendant No. 1, it cannot be called in the Court. Lastly, they prayed to reject the application.

03. Perused the application and say. Heard, both the sides.

04. Before going on to discuss it is necessary to look in to the provision of Order XII, Rule 8 -

8. Notice to produce documents. —Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the Service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

05. After perusing the above-mentioned provision, it appears that Order XII, Rule 8 of the CPC contemplates only a service of notice on the opposite party to produce certain documents. It does not

authorise or enable the party to file an application before the court seeking a direction to the opposite party to produce the documents, which the applicant/plaintiff wants their opponent/defendant No. 1 and 2 to produce. It is needless to mention that the plaintiff filed the notice at Exh. 41/1, which was served on the defendants No. 1 and 2, dated 25/09/2024. It appears that the plaintiff sent the notice after filing the present application before the court.

06. Moreover, the plaintiff, without applying for discovery of documents, could not file such type of application to direct the party to produce the document. Order XII, Rule 8 simply deals with service of notice requiring production of any document in the hands of the opposite party. Without adopting proper procedure contemplates under Order XI of CPC, the plaintiff cannot file the present type of application. As well as present application is not supported by an affidavit. Therefore, the present application is not tenable.

07. As well as upon perusal of the plaint, it appears that on the one side the plaintiff is stating that the disputed Will-deeds are in possession of advocate Sahastrabuddhe, and on the other hand the plaintiff in this present application stated that the Will-deed of defendant No. 1 is in possession of the defendant No. 1 and 2. It seems that the plaintiff herself does not know exactly in whose possession said will deed is. The defendants No. 1 and 2 denied the possession of the said will deed. In these circumstances it would not be proper to give direction to the defendants No. 1 and 2 to produce the will deed as prayed by the plaintiff. Hence, the present application deserves to be rejected.

Date : 15/01/2025.

(M. S. Patil)
15th Jt. Civil Judge Jr. Dn.,
Kolhapur.