



ORDER PASSED BELOW EXH.54
IN SPECIAL CIVIL SUIT NO.11/2021

[CNR No.MHKO090001252021]

Perused application and say. Heard both the Ld. Advocates. The application is filed to amend the written statement. The defendants want to add contention regarding will-deed in the written statement. In my opinion, the proposed amendment will not change the nature of the written statement. Similarly, it is necessary for the fair and complete trial. However, I sincerely believe that by way of amendment, the defendants cannot withdraw the previous admissions or they cannot delete those pleadings, which are not so favorable to their case. In the original written statement, certain pleadings were made to the effect that the contents in some plaint paragraphs are generally true. The defendants now want to delete these pleadings by way of amendment. In my opinion, it is not permissible. They cannot withdraw any such pleading. What will be the effect of that pleading in the light of proposed amended can be seen at the final stage.

2. The defendants relied upon the rulings :-

(i) Usha Balashaheb Swami and others V/s. Kiran Appaso Swami and others -- AIR 2007 S.C.1663, (ii) Rajesh Kumar Aggarwal and others V/s. K. K. Modi and others -- 2006 (4) Mh.L.J. 719, (iii) Kamlesh

Jagannath Suryavanshi V/s. Kalyan Shishir Kumar Dutta and another -- 2013(6) Mh.L.J. 193, (iv) Panchdeo Narain Srivastava V/s. Km. Jyoti Sahay and another -- AIR 1993 S.C.462, (v) Pankaja and another V/s. Yellappa (D) by L.Rs. and others -- AIR 2004 S.C. 4102, (vi) Ishwardas V/s. The State of Madhya Pradesh and others -- AIR 1979 S.C. 551, (vii) Pradeep Singhvi and another V/s. Heero Dhankani and others -- (2004) 13 SCC 432.

3. Considering ratio laid down in these rulings, I find that the amendment will not change nature of the written statement. Similarly, it is settled legal principle that merit of the amendment cannot be considered at the time of deciding application filed for it. It is contention of the plaintiff that the original will-deed is not on record. Today, its photocopy is placed on record. Moreover, whether such will was in fact executed by the deceased or not can be decided only at the time of trial. The legality or genuineness of the will cannot be decided while deciding amendment sought regarding it. Hence, the application is allowed, however for delay the defendants shall pay cost of Rs.2000/- to the plaintiff. Hence, the following order :-

ORDER

1. Application at Exh.54 is allowed subject to the cost of Rs.2000/- (In Words Rupees Two Thousand Only), which shall be paid within 14 days from the date of this order. After payment

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of cost, the defendants will be permitted to amend the written statement as prayed in the application.

2. The amendment be carried out within 14 days of this order and amended written statement shall be filed within the same period.

Place : Gadhinglaj.
Date : 05.12.2023.

Sd/-
(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj