

MHKO130004802016



Order below Exh. 34 in R.C.S. No. 131/2016.

(Suman Khot Vs. Sadu alias Sadashiv Todkar)

1. This is an application filed by defendant No. 2 under Order 6 Rule 17 of the Code of Civil Procedure for getting permission to carry out the amendment in written statement.

2. It is submitted by defendant No. 2 that the main suit is filed for partition, declaration and permanent injunction. It is contended by defendant Nos. 1 to 3 in their written statement at para No. 10 that defendant No. 1 has executed Will deed regarding suit property. During pendency of suit, the defendant No. 1 died on 19/09/2018. Therefore, after the death of defendant No. 1, the execution of Will is come into force and thus, he wants to amend the written statement in respect of same.

3. On the other hand, plaintiff has filed her say and resisted the contents of this application. She submitted that defendant No. 1 has never executed Will in favour of defendant No. 2 and 3. The probate of Will has not taken by defendants from Competent Court, therefore, they have never got any right as per said Will. If application is rejected, defendants will not cause any prejudice. Hence, prayed for rejection of application.

4. Perused the application and say filed thereon. Heard learned Advocates for both the sides. Studied Order 6 Rule 17 of the Code of Civil Procedure. The trial is already begun. However, the cause for the present amendment took place subsequently i.e. at the time of death of defendant No. 1, who died on 19/09/2018. By way of present proposed amendment, defendant No. 2 raised defence on the basis of alleged Will dated 19/08/2016 of deceased defendant No. 1. Therefore, it is necessary to allow them to make said proposed amendment in the present partition suit. It will not cause any change in the nature of defence. So far as, trustworthiness of contention of proposed amendment is concerned, it needs to be considered after trial. Hence, the proposed amendment are liable to be allowed. Hence, following order is passed.

ORDER

1. The application is allowed.
2. Defendant No. 2 is directed to carry out the amendment as prayed within the statutory period.
3. No order as to costs.

Sd/-

Date-05/09/2019.
Place-Kagal

(V. H. Khedkar)
Jt. Civil Judge Jr.Dn., Kagal