

ORDER BELOW EXH.31

This is an application by third party applicant (the “Applicant”) praying for impleading his name in the suit as party defendant.

2. As per the applicant the suit is for partition of property at Gat. No. 74/4 which was recorded in the name of Late Vitthal Ramchandra Kankekar. Late Vitthal Ramchandra Kankekar was party defendant to the present suit. However, he has expired on 04/05/2017. During his life time on 08/12/2014 Late Vitthal Ramchandra Kankekar, has executed a registered will and thereby he has given the property at Gat. No. 74/4 to the applicant. Thus, the applicant constitute necessary party to the present suit. Hence, this application.

3. Vide his say the plaintiff has strongly combated the application. As per plaintiff the will alledgely executed by Late Vitthal Ramchandra Kankekar is not binding upon plaintiff. Late Vitthal Ramchandra Kankekar had no right or authoriety to execute the will in respect of the property at Gat. No. 74/4. Thus, the applicant dont get right or interest in property at Gat. No. 74/4. consequently, the applicant do not constitute necessary party to the suit. Ultimately, he has prayed for rejection of the application.

4. Heard both sides. Perused record. The subject matter of present suit is property at Gat. No. 74/4. The suit is for partition. From the 7/12 extract of suit property filed by plaintiff at Exh. 3 Sr. No. 1 it is clear that for the year 2013-2014 the suit property was registered in the name of Late Vitthal Ramchandra Kankekar. Further, admittedly Late Vitthal Ramchandra Kankekar has expired on 04/05/2017.

5. The applicant has filed on record the original will dated 08/12/2014. From the said document at the outset it appears that it is executed by Late Vitthal Ramchandra Kankekar. Further, the property at Gat. No. 74/4 is also the subject matter of said will.

6. Thus, considering the material placed on record by the applicant prima facie it appears that the applicant has got some interest in the suit property. The question as to the right and authority of executer of the will and its validity can not be decided at this stage in absence of the evidence. Said issue can be decided at the time of final hearing.

7. The suit is for partition and separate possession. Thus, considering facts and circumstances of the case, nature of the suit and material on record this court is of view that the applicant constitutes necessary party to the present suit. Thus, it is apposite to direct the plaintiff to implead the applicant as party defendant in present suit by incorporating consequential amendments in the plaint. Hence, following order is passed :-

Order

1. Application is allowed.
2. Plaintiff is hereby directed to implead the applicant as party defendant in present suit.
3. Plaintiff to incorporate the consequential amendment in the plaint forthwith.

Radhanagari.

Date : 14-09-2018.

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

I Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	14/09/2018
Order signed by the P.O. On	14/09/2018
Order uploaded on	15/09/2018