

ORDER BELOW EXH. 47

(Passed on 07.10.2016)

1. Perused application. D.H. has filed his reply at Exh. 49. He has denied the adverse allegations and pleaded that the alleged objector has filed his claim on 30.12.2014 and the application for amendment is filed on 22.06.2016 but no reason is given for delay. Therefore, the application cannot be legally considered. D.H. has filed the reply to the claim of objector and denied the contention about the partition. The claim of objector is not legally tenable. In such circumstances, the petition for amendment cannot be allowed. Hence, application be rejected.

2. Considering the rival pleadings of both parties following points arise for my determination and I have recorded my finding against them with reasons as discussed below.

POINTS**FINDINGS**

- | | | |
|--|-----|-----------------------------|
| 1. Whether the objector is entitled to amendment in his claim petition as sought in this application ? | ... | <u>In affirmative.</u> |
| 2. What order ? | ... | <u>Application allowed.</u> |

REASONS

3. As to point No. 1 & 2 :-

Heard learned counsel for both parties at considerable length. Perused case record. Decreed holder has filed this execution proceeding for execution of decree of RCS No. 464/2012. During pendency of the proceeding the objector Rajiv Nitnavare has filed claim petition under Order 21 Rule 97 of CPC at Exh. 22. D.H. replied the claim petition vide Exh. 24. Said claim petition needs to be decided as a suit. Now, by way of amendment objector intending to claim relief of perpetual injunction against the D.H. and J.D. In support of his contention the learned counsel for objector has placed reliance on the authority in the case of - **Shubhada K. Borkar Vs. Ankush Rajaram Naik**, reported in **2013 Law suit (Bom) 1623** in which the Hon'ble High Court has held that,

“The learned judge was not justified to come to the conclusion that he had no powers to amend the petition under Order 21, Rule 91 of CPC. Even assuming Order 6, Rule 17 of CPC is not strictly applicable to such proceedings nevertheless, the learned Judge has ample powers under Section 151 and 153 of CPC to amend the petition considering that in terms of Rule 101 of Order 21 CPC such questions, if any arise cannot be determined in a separate suit.”

I have gone through the authority. The facts of the authority are quite similar to the facts of the present proceeding, therefore, the ratio laid down in the authority is squarely applicable to this proceeding. I am of the view that the proposed amendment is necessary for disposal of claim petition of objector. Considering

above facts, I am inclined to hold that the objector is entitled for amendment as sought in this application. In the result, I answered point No. 1 in affirmative. Therefore, application deserves to be allowed. Hence, following order.

ORDER

1. The application is allowed.
2. Objector is directed to carry out the proposed amendment in the claim petition within stipulated period.
3. No order as to costs.

Nilanga.
Dated : 07.10.2016.

Sd/-
(R. N. Barad)
Civil Judge Senior Division,
Nilanga.