

Order below Exh.28 in Regular Civil Suit No.286/2013

1. This is an application filed by plaintiff vide Order 6 Rule 17 of Code of Civil Procedure, seeking an amendment in plaint to raise additional pleadings and to challenge the Will deed executed by deceased *Gaziram Govind Deore* i.e. the common ancestor for the plaintiff and defendants and to amend the prayer clause accordingly.

2. Perused application, say of the defendants. Heard, both sides at length. Having heard, both sides and having considered the nature of suit and stage of the proceedings, following points arise for my consideration.

Points

Findings.

- | | |
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| 1. Whether the proposed amendment is essential for the just decision of the Case ? | Yes. |
| 2. What Order ? | Application is allowed. |

REASONS

As to Point Nos. 1 & 2 :-

3. The suit claim is for declaration, partition and injunction. The issues are settled and the suit is pending for evidence. As such, hearing is to be commenced. The application is thus maintainable.

4. Plaintiff alleged that on 26-07-2013, deceased *Gaziram Govinda Deore* had executed a Will deed. He died within 40 days of execution of said Will. The defendants have acted upon said Will and got certified the mutation entry 930. Plaintiff alleged that deceased *Gagiram* was not in fit state of mind to execute the Will. Defendants have fabricated the same and defrauded the plaintiff. Thus, plaintiff sought to raise such pleadings with prayer against said Will.

5. Defendants have opposed said application mainly on the ground of delay and on the point of limitation.

6. Plaintiff asserted that he got knowledge of the Will deed only when he received notice from ***Gaon-kamgar Talathi***, and after obtaining the certified 7/12 extracts of the suit properties. He thus, asserted that immediately after receipt of these document he moved present application. Which is not disputed by the defendants.

7. Thus, there finds no delay. The amendment seen to have been sought immediately after receipt of knowledge. Thus, the bar of limitation is not attracted.

8. In view of the nature of suit and to decide the shares of parties, if any, the dispute against the Will have to be decided in the same suit, so that rights of all the parties can be decided in the same suit. Thus, the possibility of multiplicity of suit can be avoided. The proposed amendment is thus found necessary and essential for the just decision of case. No prejudice will be caused to the defendant. Even the nature of suit will not be changed. Thus, no impediment found to allow the application. Accordingly, I answer points under consideration and pass following order.

ORDER

1. Application is allowed.
2. Plaintiff to carry out amendment up to next date of hearing, failing to which the order stands vacated unless time extended by the Court.
3. Costs in cause.

Date : 11-07-2016

(S.N.Shinde)
Jt. Civil Judge, J.D. Yeola

