

ORDER BELOW EXH.67 IN RCS No.141/2017

1. This is application filed by the defendants no.4 and 5 to amend their written statement vide O-6 R-17 of C.P.C. Perused application and say filed by the plaintiffs. Heard both Id. counsel for the plaintiffs and defendants.

2. It is the contention of the defendants no. 4 and 5 that on 11.09.2016 and 18.12.2016 at village Ranjani, the defendants no.2 and 3 died respectively. During the lifetime of defendants no.2 and 3, defendants no.2 and 3 executed the will on 04.03.2008 in favour of the defendants no.4 and 5, vide document no.1050/2008 at Sub-Registrar office, Ghodegaon. The propose amendment to be included in the written statement by the defendants no.4 and 5 is as under.

“ The defendant no.2 died on 11.09.2016 at village Mojani and defendant no.3 died on 18.12.2015 at village Mojani. During the lifetime of the defendants no.2 and 3, on 04.03.2008 defendants no.2 and 3 have executed the will in respect of their share in suit property, in favour of defendants no.4 and 5 vide document no.1050/2008 registered at Sub-Registrar office at Ghodegaon. Therefore, the plaintiffs have no right over the share of the defendants no.4 and 5.”

3. The defendants no.4 and 5 submitted that the propose amendment will not change the nature of the suit and no prejudice will be caused to the plaintiffs if the propose amendment in the written statement will be allowed. Hence, they prayed for allowing the application for amendment in the written statement.

4. The Id. counsel for the plaintiffs strongly opposed the application and submitted that the defendants no.4 and 5 have adopted the written statement of the defendants no.1 to 3 by filing the pursis at exh.21. The Id. counsel for the plaintiffs further contended that the defendants no.4 and 5 did not file their personal written statement, therefore the defendants no.4 and 5 cannot seek the amendment in the written statement. The Id. counsel for the plaintiff also submitted that during the pending of the present suit, the defendants no.4 and 5 got executed the will from the defendants no.2 and 3 in respect of their share in order to exclude the share of the plaintiffs in the suit property. Hence, the Id. counsel for the plaintiffs prayed for rejection of the application.

5. This is suit for the partition and separate possession, instituted by the plaintiffs on the ground that the suit property are ancestral property and partition in respect of the suit property have not been effected till the filing of the suit. It is the plaintiffs contention that the defendants no.2 and 3 were the member of the Hindu Joint family and they did not deny that the defendants no.2 and 3 have share in the suit property. Defendants no.2 and 3 being a old lady, have executed the will in respect of their share in favour of the defendants no.4 and 5. The pendency of the suit cannot prevent the defendants no.2 and 3 from executing the will in favour of the defendants no.4 and 5, as there was no alienating of the suit property. By executing the will in favour of defendants no.4 and 5, the defendants no.2 and 3 only appointed the legal heir of the share of the defendants no.2 and 3 in the suit property after their demises.

6. So far as the contention of the plaintiffs that defendants no.4 and 5 did not file their personal written statement is concern, the perusal of record show that the defendants no.4 and 5 have adopted the written statement of defendants no.1 to 3 by filing the pursis at exh. no.21. Adoption of written statement by filing the pursis amounts to the filing of the written statement. Therefore, I do not see any merit in the contention of the

Id. counsel for the plaintiffs that the defendants no.4 and 5 cannot seek the amendment in the written statement, due to the failure of the defendants no.4 and 5 to file their personal written statement.

7. In fact this amendment sought by the defendants no.4 and 5 helps to prevent the multiplicity of the proceeding as the question will not arise to bequeath the share of the defendants no.2 and 3 if the suit will be decreed. The propose amendment will not change the nature of the suit and no prejudice will be caused to the plaintiffs if the proposed amendment will be allowed. So far as the delay in making the amendment in the written statement is concern, it can be compensated by imposing the cost on the defendants no.4 and 5. In view of the above discussion I come to the conclusion that the proposed amendment sought by the defendants no.4 and 5 is necessary for the effective adjudication of the suit. Hence, I proceed to pass order as under.

ORDER

1. Application is allowed subject to the cost of Rs.2,000/- to be paid to the plaintiffs.
2. The defendants no.4 and 5 are directed to carry out the amendment in their written statement within 15 days.
3. The defendants no.4 and 5 shall file copy of amended WS on record.

Date : 31.07.2018.

C.J.J.D.,
Ghodegaon

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original Order.

Name of the Steno	: R.B.Waghmare.
Name of the Court	: Judicial Magistrate(F.C.) Court,Ghodegaon
Date of Order	: 31.07.2018.