

ORDER BELOW EXH.78 IN RCS NO. 141 OF 2007

Present application has been placed on behalf of plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908, seeking amendment in the plaint. Defendants No.1, 4 and 5 have resisted the application by filing their say. Perused the application and say. Heard learned advocates appearing on behalf of both the parties. Amendment has been sought to add the house property bearing survey No.259 and 260 situated within the limit of village Ranjani, Tal. Ambegaon, Dist. Pune as the subject matter of the suit and to clarify the nature of the said property by contending that said property is ancestral property of plaintiffs and defendants. Through proposed amendment, the plaintiffs also wants to plead the fact pertains to legality, validity and genuineness of registered will deed bearing No.1050/2008. From the pleading of the defendants, it appears that through their written statement, defendants have taken the stand that by virtue of will deed bearing No.1050/2008 they became the owner of the suit property. Since will deed bearing No.1050/2008 is decisive document, an opportunity is essential to be given to the plaintiffs to challenge the legality, validity, execution and genuineness of will deed bearing No.1050/2008. In absence of pleading, plaintiffs would be precluded from challenging legality, validity, execution and genuineness of will deed bearing No.1050/2008. So far as amendment to the extent of adding house property bearing No.259 and 260 as a suit property is concerned, said property ought to have been included in the suit property while instituting

the suit. However, as said property appears to be ancestral in nature, said property need to be included as suit property. If house property as referred in present application is remained to be included as subject matter of the suit, neither effective decree would be passed nor entire question into controversy between the parties, would be resolved. If the present application is rejected, no other option would be remained with the plaintiffs except instituting the separate suit in respect of house property as referred in present application, which would resulted into multiplicity of the proceeding. Thus, in view to decide entire controversy between the parties in single suit, the plaintiffs need to be permitted to add house property bearing CTS No.259 and 260 in the suit. So far as the amendment in the prayer clause and amendment in respect of rectification of valuation of the relief claimed is concerned, said amendment is consequential amendment. Thus, it is essential to allow the plaintiffs to carry out the said amendment in the plaint. Defendants would be at liberty to challenge the nature of house property. Moreover, burden of proving the execution, contents and genuineness of will deed in question is upon the shoulder of defendants and they have to prove it in accordance with Section 68 of Indian Evidence Act. Therefore, no prejudice would be caused to the defendants if plaintiffs are permitted to carry out the amendment as prayed for. Considering the above fact and circumstances, I pass the following order.

:: ORDER ::

1. Application is allowed.

2. Plaintiffs are at liberty to carry out the amendment as prayed for, within 7 days from today, subject to cost of Rs.500/-, payable to the defendants.

Ghodegaon
Date :- 25/07/2019

(Hamid J. Pathan)
Civil Judge (J.D.), Ghodegaon.

CERTIFICATE

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

Name of the Steno	: R.B.Waghmare.
Name of the Court	: Judicial Magistrate(F.C.) Court,Ghodegaon
Date of Order	: 25.07.2019.
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