

ORDER BELOW EXH. 17 IN R.C.S.No.27/2018

This is an application filed by plaintiff under order XXXII rule 1 and 2 of Code of Civil Procedure.

2- Plaintiff submitted that present suit has been filed for declaration and partition. Service of summons took place amongst all defendants except defendant No.3. Further plaintiff submitted that bailiff report speaks about insanity of defendant No.3. Further plaintiff also submitted that defendants No.1, 2, 4 and 5 in their written statement have submitted about insanity of the defendant No.3. In such circumstances, it is necessary to appoint defendant No.1 namely, Dadu Annappa Kumbhar as guardian for defendant No.3. With the help of present application, plaintiff seeking amendment in the plaint. Hence, the present application.

3- Defendant Nos.1 and 2 submitted their say at Exh.19 and resisted the application on the ground that contents of the application are false and not tenable. Further there is no provision in order XXXII Rule 1 and 2 for amendment. Further defendants No.1 and 2 also submitted that defendant No.3 is not being minor, there is no question of appointment of guardian. Further defendant No.1 is a senior citizens and 86 years old therefore, he is unable to act for defendant No.3.

4- Heard both parties. After perusal of record, it appears that bailiff report is on record at Exh.9. It speaks that defendant No.3 is not responding to the bailiff and unable to speak also. Further defendant No.1 and 2 submitted their say and written statement at Exh.12. In the written statement at Exh.12 in para 6 these defendants have mentioned about the insanity of defendant No.3. Therefore, it becomes necessary to represent the suit by defendant No.3 with the help of next friend. Order XXXII Rule 15 provides for procedure to be followed in such circumstances. It also speaks about the applicability of Rule 1 to 14 except rule 2A of the order XXXII of Code of Civil Procedure. Order XXXII Rule 1 and 2 provides for minor to sue by next friend. Further order XXXIII Rule 3 provides for appointment of guardian in the case of minor. Present suit is filed for partition. In such circumstances, interest of all parties needs to be protected. Therefore, interest of defendant No.3 also required to be protected and considered.

5- Further after perusal of plaint, it reveals that defendant No.1 is a father of defendant No.3. In such circumstances, being a natural father no other person is a proper to protect the interest of defendant No.3. Further objection regarding technicalities of amendment and relevant provisions will not be proper to reject the application. Further Code of Civil Procedure is a handmade to justice. Technicalities should not become hurdle while dispensing the justice. Hence, application is tenable and deserves to be allowed in the interest of the justice. In the result, I proceed to pass following order.

R.C.S.No.27/2018

Below Exh.17.

ORDER

1. The application (Exh.17) is allowed.
2. Plaintiff is permitted to insert defendant No.1 as a next friend for defendant No.3.
3. Issue suit summons to defendant No.1 as a next friend of defendant No.3 after taking steps by plaintiff.
4. No order as to costs.

Date : 07/11/2019

Kavathe-Mahankal.

[S.A.Kulkarni]
Jt. Civil Judge (J.D.),
Kavathe-Mahankal.

ORDER BELOW EXH. 112 IN R.C.S.No.111/2014

1- This is an application filed by defendant No.5, 11, 14, 18, 19 seeking directions to plaintiff to produce original copy of the sale deed dated 12.03.1997. Defendants submitted that present suit is filed for partition, perpetual injunction and declaration. Evidence of the plaintiff is completed. Presently, evidence of defendants is going on. It is the contentions of defendants that they have submitted copy of the sale deed dated 12.03.1997 along with list (Exh.57/32). The original copy of said sale deed is with the plaintiff. Hence, directions should be issued to plaintiff to produce it on record. The original copy of the sale deed is necessary.

2- Plaintiff submitted his say and resisted application on the ground that defendants themselves have in their application stated that Shankar Shirkarkhane has died. On the contrary, Shankar Shirkarkhane is alive and filed his Vakalatnama at Exh.30 and submitted his written statement at Exh.48. Further no such sale deed took place therefore, there is no question of producing the original deed by the plaintiff.

3- Heard both parties. The consideration of present application is that whether original deed of the alleged sale deed dated 12.03.1997 is with the plaintiff and directions to produce the same is warranted. Further Shankar Shirkarkhane is the defendant No.1 in the present suit. It is also record of fact that Shankar Shirkarkhane has filed his written statement at Exh.48 on 10.09.2015. These defendants have not

submitted any date of death of Shankar Shirkarkhane. Therefore, submissions of defendants that alleged sale deed dated 12.03.1997 is with the plaintiff is not acceptable. Further defendants are at liberty to adopt different mode to prove the document on record and get it proved within the provisions of law. Considering all these aspects, it is not justifiable to issue directions to plaintiff in this regard. Hence, application deserves to be rejected. In the result, I proceed to following order.

ORDER

1. The application Exh. 112 is rejected.
2. No order as to costs.

Date : 29/08/2019
Kavathe-Mahankal.

[S.A.Kulkarni]
Jt. Civil Judge (J.D.),
Kavathe-Mahankal.