

Order below Exh. 50 in RCS No. 149/2016
(Hirabai Koli Vs Uttam Koli)
(Passed on 27/06/2025)

The application filed by the third person under Order 10 Rule 2 of the Code of Civil Procedure. It is the contention of third person Nandu Bapu Koli that the deceased plaintiff has filed suit for decelerating her to the owner of the suit property. The suit property was received to the deceased Hirabai from her husband Sida Koli. He is nephew of the deceased Hirabai Koli. During the life time of deceased plaintiff he had maintained her and provided her all facilities. Since deceased having no legal heirs, and therefore, out of law and affection the original plaintiff was executed registered will bearing No. 2088/2015 dated 05/06/2015 and bequeathed the suit property to the third person. Therefore, in order to effectively adjudicate the dispute between the parties the third party is essential to the suit. Thus, he prayed for taking his name on the record of suit in place of deceased plaintiff.

2 Learned advocate for the defendant is filed his say vide Exh. 52 and objected the application. He has submitted that the predecessor in title of the suit property deceased Sida Sadu Koli had given suit property to the predecessor of defendants through registered will dated 09/09/1985 and the suit property is in possession of defendant. He further submitted that he has filed on record Will dated 09/09/1985. Lastly, he submitted that the application of third person is in respect of house property situated on the suit property, in this situation he has no objection for allowing the application.

3 Read the application and say. Hear both parties. The instant suit filed

by the deceased plaintiff for declaration her to be owner of the suit property. During the pendency of suit, she died on 31/08/2021. The third person in this application was the power of attorney of the deceased plaintiff. As per the contention of third person that during the life time the deceased plaintiff executed registered will bearing No. 2088/2015 dated 05/06/2015 in favour of the third person. Thus, third person right and interest created by the Will dated 05/06/2015 executed by deceased plaintiff in his favour. As per the case of defendants if the third person is claiming right and interest on house property situated on the suit land then the defendants have no objection to the application. The third person is claiming right and interest in the suit property on the basis of registered Will dated 05/06/2015 executed by the deceased plaintiff in his favour. In this situation the third person is necessary party to the suit in his absence effective decree can not be passed. As the third person is claiming through the deceased plaintiff claiming right and interest of deceased plaintiff in the suit property and therefore, the third person be entitled to pursue the suit being plaintiff. In the result I pass following order.

ORDER

1. Exh. 50 is allowed.
2. The third person namely Nandu Bapu Koli is permitted to pursue the suit being plaintiff as the original plaintiff relinquished her right and interest in the suit property in favour of the third person.
3. Permission is given to carry out necessary amendment in the plaint in order to implead his name on the record of the suit and accordingly furnish copy of the amendment in plaint.
4. Costs in cause.

Place :- Jath
Date :- 27/06/2025

(Prakash C. Bachhale)
Civil Judge Junior Division,
Jath