

ORDER BELOW (EXHIBIT 18) IN
REGULAR CIVIL APPEAL NO. 57/2018

Read application. Say not filed by the respondent. Heard learned Counsel appearing on behalf of the appellant.

02. Sum and substance of the contention of the appellant is that on the day of delivery of impugned judgment in RCS No. 60/2014 Suglabai Sangappa Dhavalgi i.e. original defendant No. 1 was dead. Said Suglabai died on 27/12/2016 and judgment was delivered on 29/01/2018. However, said fact was not considered by the learned Trial Court. So also, it is contended that Suglabai had executed registered will deed dated 12/08/2016 and thereby bequeathed her share in the suit properties in favour of the appellant. As such, there would be change in shares. Due to illiteracy of the appellant, said document was not produced before the Trial Court. Hence, the appellant has requested to allow her to lead the evidence in respect of said will deed.

03. On perusal of impugned judgment, it can be seen that it was delivered on 29/01/2018. In the said judgment, share was not allowed to the Suglabai. Prima facie it can be seen that said Suglabai was having share in the suit properties. However, no comment is made by the learned Trial Court in respect of her share. The appellant has produced the copy of will deed dated 12/08/2016 on record showing that she has bequeathed her share in the suit properties in the Gat No.

83 in favour of the appellant herein. As such, said will deed is material document to decide the shares of the parties to the suit. It is contended that said will deed could not be produced due to illiteracy of appellant. Said contention of the appellant is not challenged by the respondents by filing say. As such, the appellant has established that despite exercise of due diligence said will deed could not be produced before the Trial Court. This Court requires said document to correctly decide share of the parties. In the result, the application for production of additional evidence in respect of will deed in the Appellate Court is allowed.

Place : Solapur
Date : 19/12/2024

(Jaydip J. Mohite)
District Judge – 3,
Solapur.

CERTIFICATE

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

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| (a) | Name of the Stenographer | : Sou. Manjiri Makarand Kulkarni,
Stenographer (Grade-I) |
| (b) | Court | : District Judge-4 , Solapur. |
| (c) | Date of Judgment | : 19/12/2024 |
| (d) | Order signed by the
Presiding Officer on | : 19/12/2024 |
| (e) | Order uploaded on | : 01/01/2025 |