

**ORDER BELOW EXH 84 IN REGULAR CIVIL SUIT NO.194/2015**

Defendant no.1 has filed the present application under Order 6 Rule 17 of Civil Procedure Code. The plaintiff has filed his say at Exh.89 and objected the application.

2) Heard both sides. Perused the documents on record. On perusal of the same, it appears that the plaintiff has filed present suit for partition and separate possession of his share out of the suit properties. Defendant no.1 has appeared in the Court and filed his written statement at Exh.48. Now, it is alleged by defendant no.1 that defendant no.3 has executed Will-Deed of the suit properties in his favour. Thereafter, on 14/04/2017 defendant no.3 died. Therefore, it is necessary to add contentions regarding the alleged will-deed in the written statement by way of amendment. Defendant no.1 has filed the copy of Will-Deed at Exh.90. On perusal of the same, it appears that the said Will-Deed is in respect of the suit properties. As the Will-Deed is in respect of the suit properties, it is necessary to add contentions regarding the same in the written statement. It appears that in order to avoid the multiplicity in the judicial proceeding, it is necessary to add the contentions regarding the Will-Deed in the written statement.

3) It is submitted by the plaintiff that the suit properties are joint family properties and the partition of the same is yet not taken place. Therefore, defendant no.3 did not have right to execute the Will-Deed of the same. Moreover, the plaintiff has submitted that notice of lis is already registered at Sub-Registrar Office. Therefore, the alleged Will-Deed is not legal. Defendant no.3 was not in position to execute the Will-Deed. So also, he has submitted that he has taken objection for carrying out the mutation

entry on the basis of alleged Will-Deed. On these grounds, the plaintiff has prayed to reject the amendment application. However, as discussed above, the alleged Will-Deed is regarding the suit properties. Therefore, legality of the said Will is required to be decided in the present suit. The objections raised by the plaintiff required evidence. The alleged objections can be decided during the trial. The said objections cannot be decided at this stage. Therefore, it is not legal and proper to reject the proposed amendment on the grounds raised by the plaintiff. Hence, I pass following order.

**ORDER**

- 1) The application Exh.84 is allowed subject to cost of Rs. 500/- to be paid to the plaintiff.
- 2) The defendant no.1 is directed to carry out necessary amendment in the written statement within the period of 14 days.
- 3) The defendant no.1 to submit copy of amended written statement.

Date: 04/05/2022

( P.A.Patil )  
Civil Judge Junior Division, Sangola.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment/order:-

- a) Name of the Stenographer : S. P. Parekar
- b) Court : Civil Judge Jr. Division & J. M. F. C, Sangola.
- c) Judgment/Order signed by PO on : 04/05/2022
- d) Judgment/Order uploaded on : 04/05/2022