

CNR NO.MHST-0500 0950 2021

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD

ORDER BELOW EXH.22

IN

PROBATE NO.17 OF 2021

Vrushabh Popat Pawar

...Applicant.

*Versus*

Nil.

...Respondent.

Ramesh Baburao Mane &amp; Ors.

Third party.

Advocate Shri. A. T. Madane for the applicant.

Advocate Shri. N. S. Patil for the third party.

Coram : S. B. Todkar,  
C.J.S.D. Karad.  
Date : 06/09/2024

**ORAL ORDER :**

This is an application filed by the applicants/third parties for directions to the original applicant to amend the probate application and to implead them as respondents in the probate application under Order I Rule 10 of the CPC.

2. Perused the application, reply at Exh.25. Heard Ld. Advocate for the applicants and third parties.

3. As per the contents of present application, the applicant has filed probate application against the unknown person for getting the will of probate on the basis of will deed executed by Sindhubai Sampat Mane on 26/06/2021 on the grounds specifically mentioned in the application. The said probate application is false and they do not admit its contents. The contents of probate application are imaginary. The will deed executed by Sindhubai Sampat Mane on 26/06/2021 is false and imaginary. The description of property is incorrect, incomplete and wrong without having the boundaries. They denied all the contents of probate application. According to them, Late. Dhondiram Tukaram Mane was the original person. Late. Gangubai was the wife of Late.

Dhondiram. They were having Baburao (deceased), Sampat (deceased), Balaso, Babaso, Chandrakant (deceased), Laxman, as their sons and deceased Kamal and deceased Kanta were daughters. The third party person is having uncles namely Sampat, Balaso, Babaso, deceased Chandrakant and Laxman. His father Baburao is expired. His deceased uncle Sampatrao and his deceased wife Sindhutai died without having children. Late. Sampatrao was Government servant. The family of third person is big and having many members. Late. Sampatrao died but he was not having children. Third party person and his family members were taking care of Sindhutai during her lifetime. Deceased Sindhutai was having love and affection on the third person and his family member. During the lifetime of Sampat third person and his family members were cultivating his lands. Deceased Sampat has not executed any will about the properties in favour of any person. Applicant has maintained deceased Sindhutai. Sindhutai is applicants' paternal aunt. Applicant taking the advantage of advance age of Sindhutai prepared bogus, unregistered will deed on 26/06/2021. The thumb impression of Sindhutai on said will deed is bogus. To grab the properties, amount kept in banks and shares of Sindhutai applicant has prepared bogus, false, unregistered will deed hurriedly. At that time, Sindhutai was not having knowledge what she was doing. Partition suit is pending about the properties mentioned in probate application before the Court. By way of will deed applicant cannot become legal heir/legal representative of deceased Sindhutai. Therefore, probate application is liable to be rejected. Therefore, their presence is necessary for the decision of probate application. Hence, the application.

4. On behalf of the applicant his Ld. advocate filed his reply at Exh.25 and strongly opposed the application on the following grounds.

Application is false. The contents of application are false therefore, he is not admitting it. He admitted the geneology tree, the third person is having uncles namely Sampat, Balasaheb, deceased Chandrakant and Laxman, his father Baburao is expired, his uncle Sampat and his wife died without having children, his uncle Sampat was in Government service etc. the averments made by the third person in his application below Exh.22. It is the contention of the applicant that partition took place between his paternal uncle Sampat and his brother and as per partition they were having possession and cultivating their lands. Sampat was in Railway service. As the Sindhutai and his father Popat were little their father performed second marriage.for their maintenance and kept them at Mumbai. When he become major Popat started driving work. After his retirement in the year 2005 Sampat settled in Shere village in Karad taluka. During his lifetime from the source of his income of salary he has purchased old house from Sakhubai Dnyanu Mane on 14/07/1994 on the name of his wife Sindhutai. Their agricultural lands were separate. The name of Sampat and his wife Sindhutai was entered in record of rights to their properties. On behalf of Sindhutai her father Popat was cultivating her lands. When she was in good health condition on 26/06/2021 she has executed will deed on account of love and affection on the Vrushabh. The third persons are not having any direct, indirect right, title, interest over the suit properties. On the abovesaid grounds, the applicant has prayed for rejection of the application with costs.

5. It is settled legal position that, the plaintiff being a *dominus litis* cannot be compelled to make any third person a party to the suit, be that of a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided

effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without whom his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.

06. A necessary party is a one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

07. I have gone through the record. It appears from the record that applicant has filed the original probate application against unknown person for probate on the grounds mentioned in the probate application. The probate application is in respect of the agricultural land bearing block No.258/8A, 258/9A, 33/1, house property bearing Grampanchayat No.984, open land bearing Grampanchayat property No.985 etc. I have gone through the plaint annexed by third person alongwith document list Exh.29. The said suit is filed by 1) Shri. Balaso Dhondi Mane & Ors. Vs. Ramesh Baburao Mane & Ors. for the declaration, partition and perpetual injunction in respect of the properties bearing block No.33/1, 258/6A, 258/10A, 258/8A, 258/9A of the lands and city survey No.392/A, 394/A, 395/A, 396/A, block No.169/2 to 19 of the village Shere. In short, the subject matter of probate application and partition suit i.e. R.C.S. No.284/2022 is similar. All/most of the properties mentioned in probate application are included in the suit properties of R.C.S.No.284/2022. In the say given by the applicant has admitted the genological tree given by the third person. It appears from contents of R.C.S.No. 284/2022 that the properties mentioned in probate application are not yet partitioned by

meets and bounds. It means that prima facie it appears that directly or indirectly the third persons are concerned with properties mentioned in the probate application. Third parties are kinsmon of the deceased Sampat and Sindhutai. If they are joined as respondents, no harm, loss or prejudice will be caused to the applicant but if application is rejected it will definitely harm to the third parties if they are having any concern with the suit premises. If the third parties impleaded as party respondents, it will help the court to bring the truth on record whether they are concern with the suit premises or not. On oath, Ramesh Baburao Mane i.e. third party has stated that they are having concerned over the suit properties. If they implead as a party it will avoid multiplicity of the proceeding. The third parties have shown that they are proper and necessary parties. Without impleading the third parties as respondents no order can be made effectively and their presence is necessary for complete and final decision of the questions involved in the probate application. Hence, I proceed to pass the following order.

**:: ORDER ::**

1. Application is allowed.
2. The applicant is hereby ordered and directed to amend the probate application and implead the third parties as respondents, within 14 days from the date of this order.
3. The applicant is hereby directed to serve the writ of summons/ notices to the third parties in order to enable them to file their say to the probate application.

Date : 06/09/2024.

[S. B. Todkar]  
Civil Judge, S.D. Karad.