



Order Below Exh. 52 in RD No. 47/2022
(Balkrishna Vishnu Patil Vs. Rameshwar Trimbak Swami)

The third party Krishna Charitable Trust filed this application for striking out defence of the DH/plaintiff. It is contended that, this Court has directed the DH/plaintiff to file on record will-deed dated 01/10/2002 executed by the Abdulkarim Suleman. In spite of direction of the Court, the DH/plaintiff is not ready to produce said will-deed and is disobeying orders of the Court. Therefore, the third party prayed to strikeout defence of the DH/plaintiff.

2. DH/plaintiff opposed the application by filing say. It is contended that, this application is not maintainable. Ownership rights of DH/plaintiff are already considered in Probate Application No. 5/2016. The third party is having right to challenge said probate order by filing appeal and in RCS No. 368/2017. This application is filed only to prolong the execution. The third party has not filed affidavit along with its application at Exh. 44, 45 and 46. No provision is specified under which this application is filed. Contending all these, DH/plaintiff reject the application.

3. Heard both sides. Shri. A. T. Ghate learned counsel for the third party submits that, will-deed on the basis of which the DH/plaintiff is claiming rights is false and fabricated document. Boundaries of suit

property are not specified in the original will-deed. Therefore, the DH is intentionally not filing copy of the will-deed on record. Hence, it is required to strikeout defence of the DH/plaintiff. He therefore, prayed to allow the application.

4. Per contra, Shri. G. P. Shinde learned counsel for the decree-holder/plaintiff submits that, original will-deed is not available with the DH/plaintiff. Copy of said will-deed is already filed on record. Pursis (Exh. 50) to that extent is already filed on record. He therefore, prayed to reject the application.

5. Perused the record. There is no dispute that, this Court has directed the DH/plaintiff filed on record copy of will-deed. It is the contention of the DH/plaintiff that, said will-deed is not available with him and it is filed in the Probate proceeding. There is no reason to disbelieve said fact. Copy of said will-deed is brought on record which could be considered in accordance with law if, original will-deed is not available. Hence, submission advanced on behalf of the third party are not considered. Therefore, the application deserves to be rejected. In the result, I pass following order,

ORDER

The application (Exh. 52) is rejected.

Date : 06/07/2026

(Prashant P. Kulkarni)
3rd Jt. Civil Judge Junior Division,
Karad.