



ORDER BELOW EXH.73 IN R.C.S. NO.122/2021

(Priya Shankar Ahiwale Vs. Sima Aabaji Gaikwad, ors)

(MHST-1400-1202-2021)

Defendants No.1 to 4 have preferred this application under order 6 rule 17 of the Civil procedure code for seeking amendment in the written statement.

2. The contention of the defendants that, the present suit is filed for partition and separate possession. The suit properties are self acquired properties of the deceased Aabaji Hiralal Gaikwad. Who was father of the plaintiff and defendant No.2 to 4. The deceased Aabaji Gaikwad has executed will deed in respect of suit properties. The defendants have filed Probate Application No.1/2021 for probate of said will, which was pending. The order on said probate application, not in favour of the plaintiff. Therefore, she has filed and First Appeal No.21732/24. This first appeal was pending when written statement was filed by the defendants. On 26.09.2025 the Hon'ble High Court, Kolhapur passed an order in respect of probate. Therefore, it is necessary to give details in written statement regarding will deed.

3. It is further contention that, due to proposed amendment nature of the written statement would not be changed. The proposed amendment would be helpful to adjudicate matter on merits. Due to said proposed amendment no loss or injury may caused to the plaintiff. The proposed amendment is in technical nature. Lastly, prayed for allow the application.

4. The plaintiff has filed say on it an objected that, the contention in the amendment application are false and bogus. The suit properties are the self acquired properties of deceased Aabaji Hiralal Gaikwad. He was father of the plaintiff. Therefore, after demise of Aabaji Hiralal Gaikwad the plaintiff

has inheritance right in the suit properties.

5. Further contention of the plaintiff that, Abaji Gaikwad died during period of Covid-19 wave. Therefore, he has not executed will deed in respect of suit properties. On 26.09.2025 application for probate is rejected. The defendant No.1 to 4 are filed heirship certificate without including name of the present plaintiff in said application. The plaintiff appeared and filed her say in that application. Thereafter, the defendant No.1 to 4 withdraw said heirship application. The plaintiff also filed Heirship Certificate No.116/2020. In that application plaintiff furnished all information in respect of bank fixed deposit and lockers. The said application is on hearing stage. On 26.09.2025 the Writ Petition No.5455/2024 is rejected. In Heirship Certificate No.116/2020 the court has passed order regarding commissioner. The defendant filed writ petition against said order which is rejected by the Hon'ble High Court.

6. The Probate Application No.1/2021 is rejected. Therefore, defendant cannot allow make amendment in the written statement in respect of will deed. This will deed is bogus, false and fabricated. All the properties are included in the present plaint therefore no necessity again to mention in the written statement of the defendant. Deceased Aabaji Hiralal Gaikwad has not executed will deed in his life-time.

7. The defendant have not took cross-examination of the plaintiff and not lead their evidence in present suit. The suit is on final argument stage. The present application is filed only to prolong the suit. Lastly, prayed for rejected the application with costs.

8. Heard both the side.

9. On the strength of rival contentions of both the parties, following points arise for my determination. I have recoded my finding on all points for reasons mentioned their below.

Sr.No.	Points	Finding
1.	Whether the proposed amendment in the written statement of defendants are necessary and proper ?	Yes.
2.	What order ?	As per final order.

REASONS

AS TO POINTS NOS. 1 AND 2:

10. On the basis of above controversy I gone through carefully plaint, written statement and amendment application. The present suit is filed for partition and separate possession by the plaintiff. The plaintiff is daughter of the defendant No.1 and sister of the defendant No.2 to 4. The suit is filed for partition to get share in the suit properties. The suit properties are self-acquired properties of deceased Aabaji Hiralal Gaikwad. In present suit the main dispute between parties regarding whether deceased Aabaji Hiralal Gaikwad has executed will deed or not. The Suit properties are the subject matter of the will deed. The parties filed various application regarding said will. They also filed heirship certificate application. The Hon'ble High Court First Appeal No.21732/2024 is disposed of by reason of subject matter of will is situated at Phaltan, Dist.Satara and in view of section 213 and 57 of the Indian Succession Act, there is no requirement of obtaining probate certificate.

11. The suit properties are included in the present suit also subject matter of the will deed. Therefore, the contention regarding will deed are essential in the written statement. The will deed is in the possession of the defendants. The defendants are claiming shares in view of will deed. Therefore, the proposed amendment is necessary to adjudicate the matter on merits. On perusal of written statement the defendants made contention regarding will deed and contended that, the suit properties are comes in their

share in view of will deed. Therefore, the plaintiff has no right ask to partition in the suit properties because they are part of the will deed. The proposed amendment is consistent to the defence of the defendants. By way of proposed amendment no nature of written statement will change. The proposed amendment will helpful to decide controversy between plaintiff and defendants in one and same suit. Considering the facts and circumstances it would be proper to allow amendment application. In this view of the matter, I answer point No.1 in the affirmative and in response to point No.2, I pass following order.

ORDER

1. Application at Exh.73 is hereby allowed.
2. The defendants are hereby directed to carry out proposed amendment in the written statement and submit amended written statement till next date without fail.

Place : Phaltan.

(P. S. Mule)

Date : 06.02.2026.

4th Jt. Civil Judge Jr. Dn. Phaltan.