

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

**WRIT PETITION NO.3485 OF 2016 WITH
CIVIL APPLICATION NO.16531 OF 2016**

Sakharam Keshav Kulkarni,
Age 73 years, Occ. pensioner & Agri.
R/o Takli Lonar, Tq. Shrigonda,
District Ahmednagar ... PETITIONER

VERSUS

1) Yashwant Keshav Kulkarni,
Age 76 years, Occ. Pensioner & Agri.

2) Smt. Nalini Yashwant Kulkarni,
Age 68 years, Occ. Household

Nos.1 and 2 R/o Bankar Mala,
Shrigonda, Tq. Shrigonda,
District Ahmednagar.

3) Sau. Pushpa Vishwanath Joshi,
Age 65 years, Occ. Household,
R/o Nivdung, Tq. Pathardi,
District Ahmednagar ... RESPONDENTS

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Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for petitioner
Shri Amol Gawali, Advocate for respondents
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CORAM: T.V. NALAWADE, J.

DATED: 23rd December, 2016.

ORAL JUDGMENT :

1. Rule. Rule returnable forthwith. Heard both sides by
consent for final disposal.

2. The Civil Application No.16531/2016 is filed for permission to amend the Writ Petition and to add the prayer in respect of order made by the Trial Court on Exh.196. After hearing both sides, this Civil Application is allowed and permission is granted to carry out amendment in the petition. The amendment be shown immediately.

3. The submissions made by both the sides show that, the will which was tendered in evidence by defendant was withdrawn and so, that will is not for consideration before the Court in the suit which is filed for partition and declaration.

4. It appears that, the petition was filed to challenge the order made by Civil Court on the application filed for amendment, which was filed for giving reply to the will produced by the defendants. That application was rejected. As the will itself is withdrawn by the defendants, there will be no necessity of amendment in the plaint and so, the initial relief which was claimed in the petition cannot be given and to that extent, the petition has become infructuous.

5. In view of the amendment allowed to the petition by allowing the Civil Application, now there is new relief which is in

respect of the prayer made before the trial Court to delete Issue No.3AA. The submissions made show that, this issue has relation with the will. In view of this circumstance, and aforesaid circumstances, this Court holds that, the trial Court ought to have allowed the application at Exhibit 196.

6. In the result, the petition is allowed. The order made by the trial Court on Exhibit 196 is set aside. The application Exhibit 196 is allowed and Issue No.3AA is deleted. Rule made absolute in these terms.

(T.V. NALAWADE, J.)

fmp/wp3485.16