

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 10857 OF 2016

Mrs. Bharati Vilas Sule
since deceased by legal heirs
Shri Vilas Dattatraya Sule & Anr. Petitioner

Versus

Mr. Motilal Khemraj Jongra & Anr. Respondents

Deepak M. Gupte for petitioner.

***CORAM : N. M. Jamdar J.
Tuesday 18 October 2016***

P.C.

. By this petition, the petitioner has challenged the order passed by the learned Civil Judge Senior Division, Pune, whereby leave to amend the written statement has been granted in favour of the defendant nos.2 and 3. In the suit, a defence was taken by the defendant nos.2 and 3 that they have a right on the basis of registered sale-deed and by way of amendment what is sought to be introduced is a claim based on the alleged Will dated 25 April 2011. The learned Counsel for petitioner submitted that the Will is a part of the probate proceeding and also it is not in respect of the suit property.

2. The learned Civil Judge has granted an amendment to written statement. Multiple defences can be taken in the written statement. The learned Civil Judge has also held that the defendant nos.2 and 3 have taken a risk to put forth two different defences and they will have to abide by the consequences. Even otherwise if the amendment is granted, the petitioners will have full liberty to meet the case and merely because amendment is granted, it does not mean that the averments made in the amended portion are accepted as the defendant nos.2 and 3 will have to prove their case. It is open to the petitioner to advance such contentions as may be available on merits of the amendment as well as the fact that defendant nos.2 and 3 have taken two different defences and consequences flowing therefrom.

3. Keeping all contentions of the parties open, the Writ Petition is disposed of.

(N. M. Jamdar, J.)