

ORDER BELOW EXH.163 IN SCS NO.935/2011
[Rohini Kalyani & ors. Vs. Sulochana Kalyani & ors.]

CNR No.:- MHPU02-002774-2011

1. The plaintiffs have filed the present application for framing additional issue.

2. In brief, the plaintiffs have submitted that they have pleaded that due to old age and other responsibilities, the defendant No. 1 expressed inability to continue as trustee of plaintiff No.5 Trust and tendered her resignation w.e.f. 06/07/2007. Further, they have pleaded that she requested the Board of Trustees to relieve as Trustee of plaintiff No.5 and also relinquished her position as a beneficiary of Trust. By written statement Exh.82, the defendant No.1 has contended that the resignation is illegal and it is obtained from her by misrepresentation. Therefore, there is need to frame following issue as additional issue :-

Additional issue

Does the defendant No. 1 prove that plaintiff No.1 obtained resignation of defendant No.1 as trustee and beneficiary of plaintiff No.5 Trust by misrepresentation ?

3. The application is opposed by the defendant No. 1 by reply Exh.164. She has submitted that it is for the plaintiffs to prove their case with regard to resigning of defendant No.1 due to old age and other responsibilities. The contention raised by her in

the written statement is only by way of defence. The obtaining of resignation of herself is not matter in controversy between the parties. There is no necessity to frame additional issue. Therefore, she prayed for rejection of the application. By pursis Exh.165, the defendant No.2 adopted reply Exh.164 filed by the defendant No.1.

4. Heard the learned advocates appearing on behalf of both sides. The learned advocate for the plaintiffs submitted that the defendant No.1 has admitted the fact of giving resignation. As she has pleaded obtaining of resignation by misrepresentation, in view of Section 102 of the Indian Evidence Act 1872, the burden is on the defendant No.1 to prove that the resignation was obtained by misrepresentation. Therefore, the learned advocate prayed for framing additional issue.

5. Per contra, the learned advocate for defendant No.1 submitted that the defendant No.1 has pleaded the facts of misrepresentation for the sake of her defence. In view of order VI Rule 4 of CPC, all the necessary particulars are required to be given by a party who is pleading misrepresentation, fraud, breach of trust etc. Further, the learned advocate submitted that there are no such necessary particulars in the written statement of the defendant No.1. At the time of hearing on injunction application (Exh.5), the plaintiffs had raised contention of similar nature which is considered by this Court while deciding that application.

Only on the basis of certain lines in written statement of the defendant No.1 regarding misrepresentation, the additional issue is not required to be framed. The learned advocate prayed for rejection of the application.

6. I have gone through the pleadings of both the sides. The plaintiffs have specifically come with the case that inspite of resignation by the defendant No.1, the defendants No. 1 and 2 have passed resolution styling themselves as trustees of the plaintiff No.5 Trust. Therefore, the plaintiffs have asked a decree for declaration that the said resolution dated 12/01/2010 is illegal as well as null and void. The plaintiffs are also seeking declaration that the resolution dated 22/01/2010 brought into existence by the defendants No. 1 and 2 is also illegal as well as null and void. While dealing with the plaint allegations, in written statement Para Nos. 1A and 1D, the defendant No.1 has pleaded that the documents alleged to be executed by her were obtained in wrongful and illegal manner by the plaintiff No.1 by misrepresentation and misleading her.

7. Considering the pleadings of defendant No.1 regarding the misrepresentation, framing of additional issue is necessary. As the defendant No.1 raised defence of misrepresentation, it is just and proper to frame the additional issue as prayed by the plaintiffs. Thus, the application is liable to be allowed. In the result, I pass the following order :-

ORDER

1. The application is allowed.
2. The issue described in Para No.2 of this order is framed as additional issue No. 2A.

Pune.

Date :- 15/07/2022

(K.M. Jaisingani)

9th Jt. Civil Judge Senior Division, Pune

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I affirm that the contents of this P.D.F file judgment/Order are same,
word to word, as per the original judgment/Order.

Name of the Stenographer	Mrs. J.S. Tembre,
Name of the Court	Mr. K.M. Jaisingani, 9 th Jt. C.J.S.D., Pune.
Date of Judgment	15/07/2022
Judgment signed by the P.O on	30/07/2022
Judgment uploaded on	30/07/2022

