

**REGULAR CIVIL APPEAL NO. 40/2019**

(OLD NO. REG. C. A. 54/2012)

(CNR NO MHBU20007752019)

Lilawati w/o Muktaram Sobhage

Versus

Balaram Namdeorao Kharat

ORDER BELOW EXHS. 16 & 17

1. These are the application for amendment in appeal memo as well as in suit. Application Exh. 16 is to amend plaint. Application Exh. 17 is to add grounds in appeal memo by amending it. According to appellant/original plaintiff, she filed suit against the defendant for re-conveyance, possession and for mesne-profits regarding suit property. Appellant/plaintiff alleged that father of original defendant, Balaram was doing illegally money lending business and suit transaction is out come of money lending transaction in between the plaintiff and defendant Balaram. It is the contention of plaintiff that she executed nominal sale-deed on 24-03-1994 in favour of defendant Balaram and it was executed as nominal security also and possession was never delivered. But, defendant forcibly dispossessed her. Plaintiff's further contention is that defendant was doing tailoring work and was not an agriculturist or agriculture labour. Thereby, defendant was not competent

person to purchase agriculture land without sanction from the competent authority. Hence, plaintiff wants to amend the plaint by adding para no. 12-A in plaint and also substitute the occupation of defendant as tailoring by deleting agriculturist.

2. Respondent submitted reply on application itself and opposed the application on the ground that application is filed at belated stage. No reasonable cause is shown for delay. Further, proposed amendment is contrary to the original case put-forth by the appellant. Hence, prayed to reject the application.

3. Application Exh. 17 is for amendment in appeal memo and to add grounds as para no. 12-A in appeal memo. According to appellant, that he originally filed suit against the defendant for re-conveyance the possession and damages and for mesne-profits. Appellant made similar contention in this application also as that of application Exh. 16 and also wants to add grounds in respect of fact of section 89 of the Bombay Tenancy and Agriculture (Vidarbha Region) Act. Respondent submitted reply on application itself and opposed the application in similar manner as that of his reply on Exh. 16.

4. Heard both sides and perused the record of appeal as well as record of learned trial court. Plaintiff present

appellant filed suit for re-conveyance for possession, damages and for mesne-profits. In the said suit, it was contention of plaintiff that in the month of March – 1993, plaintiff was in need of Rs. 17,000/- and father of defendant, lent money to plaintiff at usual rate of interest and obtained nominal sale-deed of the suit field as a security. Accordingly, plaintiff repaid the amount along with interest, but defendant had not re-conveyed the sale-deed of the suit property, but defendant illegally took the possession of the suit field. Thereby, plaintiff filed the suit to re-convey the suit field to her and also for possession for damages and for enquiry into mesne-profits.

5. In the suit, defendant appeared and submitted written statement that plaintiff sold the suit property to him for consideration of Rs.51,000/- by registered sale-deed dated 24-03-1994 and on the same date, delivered the possession of the suit property to him. After hearing, the learned trial court framed the issues and after adducing evidence, heard both the sides on merit and dismissed the suit. Thereafter, present appellant preferred the appeal before Hon'ble High Court, Bench at Nagpur vide First Appeal No. 160/2003. But, said appeal is transferred to the District Court at Buldana on the ground of pecuniary jurisdiction on dated 11-05-2012. Thereafter, on 21-09-2012, appellant submitted both these application for amendment in plaint and amendment in appeal

memo.

6. Plaintiff shows that plaintiff made allegations that he executed nominal sale-deed in favour of defendant as security towards loan amount and claimed for re-conveyance. Now, by way of amendment, plaintiff wants to add the new para no.12-A that defendant is not agriculturist, thereby, he cannot purchase the agriculture land without the sanction from the competent authority as per section 89 of the Bombay Tenancy and Agriculture Land (Vidarbh Region) Act, 1958. Plea of money lending transaction and nominal sale-deed towards security of loan amount and another plea as document as vide for contravention of section 89 of the Bombay Tenancy and Agriculture Land (Vidarbh Region) Act, both the pleas are inconsistent to each other. Further, record shows that originally suit is filed on 30-03-1996 and it decided on 24-03-2002. Thereafter, present applications are moved on 21-09-2012 at belated stage. Amendment will change the nature of suit. Under such circumstances, both the amendment application Exhs. 16 and 17 proposed amendment are inconsistent with the pleading of plaintiff. Also filed at belated stage. Hence, I am of the view that application Exhs. 16 and 17 deserve to be rejected. Hence, I pass the following order.

ORDER

Application Exhs. 16 and 17 are hereby rejected.

Sd/-

Dt. 10-12-2020

(S.V. Khongal),
District Judge-1, Mehkar,
District Buldana.

Certificate

I affirm that the contents of this order are word for word as per original.

Name of Court : District Judge – 1, Mehkar.

Name of Steno : T.K. Dekhane, Stenographer (Grade -1)