



R.C.A./25/2019

Shivdas Govindrao Wasnik & others

-vs-

Rajani Milind Meshram & others

ORDER BELOW EXH 13

(Passed on 26.2.2020)

1. This is an application taken out by the appellants for grant of permission to amend the memorandum of appeal. The case of the appellants is that due to typographical error in prayer clause (2) the words 'remand back the case to the Trial Court is not mentioned' and the same needs to be amended by way of proposed amendment in prayer clause (1) after the word 27.3.2019 and allow the said appeal in memorandum of appeal. Likewise the appellants also want to do proposed amendment in prayer clause (2) after the word others" or in alternative Remand the matter back to the Trial court for fresh trial".

2. The appellants prayed that the proposed amendment in memorandum of appeal may be allowed.

3. The respondents have filed their say to an application Exh 13. The respondents have submitted that there is no need to send back the matter to the trial court. Hence, application may be rejected.

4. Heard learned counsel of both the parties at length. On considering rival pleadings of both parties, the following points arose for my determination and I record my findings with reasons thereon as under :

Points

Findings

- 1) Whether memorandum of appeal is not drawn up in a prescribed manner and it is essential to amend by way of proposed amendment ? -... Affirmative.
- 2) What order ? .. As per final order.

- R E A S O N S -

As to point No. 1 :

5. On perusal the memorandum of appeal, it is found that in prayer clause (2) the word " quash and set aside the judgment dated 27.3.2019 has been mentioned though the present memo of appeal has been filed against the judgment passed in RCS No. 16/2013 - Mr, Shivadas & others -vs- Ms. Rajani & others passed by the Civil Judge (Jr.Dn.). Thus , prayer of quashing a civil judgment in memorandum of appeal disclosed that it is not drawn up in prescribed manner. So in view of order 41 rule 3 of the Code of Civil Procedure, it is desirable to allow to the appellants to do amendment in the memorandum of appeal as per proposed amendment.

6. Considering material on record, I do not find force in the objection raised by the learned counsel of the respondents. Whether to remand the appeal before the Trial Court or not will be decided on merit. It is not necessary to decide it at this juncture. But it is found that the prayer of proposed amendment to set aside judgment and remand the matter to the Trial Court for fresh trial is essential while deciding appeal.

7. According to the appellants due to typographical error , it is not mentioned that to remand the matter before Trial Court. That is not specifically denied by the counsel of the respondents. Considering the nature of proposed amendment, I find that it is essential to decide appeal on merits. Hence, proposed amendment is deserves to be granted . I do not find any force in the submission of learned counsel of the respondents that proposed amendment is liable to reject.. I find that this is a fit case to grant an application of proposed amendment in memorandum of appeal. Accordingly , I record my finding to point no. 1 in the **affirmative**.

As to point no. 2 :

8. In view of discussion and finding to point no. 1 , the application of proposed amendment in memorandum of appeal is deserves to be granted. Accordingly I proceed to pass the following order :

O R D E R

- 1) Application of proposed amendment Exh 13 is granted.
- 2) Appellants to carry out the proposed amendment in memo of appeal within 14 days
- 3) Parties to bear their own cost.

Date-26.2.2020

(D.G. Kamble)
District Judge-2
Gadchiroli

