

MHGA010007082019



R.C.A./25/2019

Shivdas Govindrao Wasnik & others

-vs-

Rajani Milind Meshram & others

ORDER BELOW EXH 14

(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 word 'quash' is mentioned though the present memorandum of appeal has been preferred against the judgment passed in Civil Case. Hence, the word 'quash' needs to be deleted from prayer clause (2) of memorandum of appeal.

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 14. The respondents have submitted that there is no need to grant proposed amendment. He has submitted that an application of proposed amendment in memorandum of appeal 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 -

4. As to point No. 1:

On perusal the memorandum of appeal, it is found that in prayer clause (2) the word " quash' 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.

5. Considering material on record, I do not find force in the objection raised by the learned counsel of the respondents. But it is found that the prayer of proposed amendment to delete the word 'quash' is essential while deciding appeal.

6. According to the appellants due to typographical error the word 'quash' is mentioned. 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 :**

7. 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 14 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