

MHKO150000222017



R.C.S. No. 5/2017
Nita vs. Dinkar

ORDER PASSED BELOW EXH. 52

This is an application filed by plaintiff under Order VI Rule 17 of Civil Procedure Code.

2. According to plaintiff, they filed present suit for partition and separate possession. The plaintiff no. 1 is wife of defendant. The plaintiff no. 2 to 4 are the daughters of defendant. By way of proposed amendment plaintiff wanted to insert prayer of declaration that is the plaintiff no. 1 is legally wedded wife of defendant. According to plaintiff, the defendant has denied relationship of plaintiff no. 1 with him. He has denied the marriage solemnized with plaintiff no. 1. In this circumstances, the plaintiffs are wanted to amend plaint and wanted to insert prayer of declaration and to revalued the suit. They lastly prayed for allowing application.

3. The defendant has filed his say at Exh. 55. He has denied all allegation, pleading and prayer of plaintiff. According to him, the maintenance proceeding was decided between plaintiff no. 1 and him, and criminal case was decided between plaintiff and defendant. In that criminal case, the finding has been given that is the plaintiff no. 1 is not wife of defendant. Further, defendant pleaded that, the plaintiff no. 1 is wife of Sanjay Ramu Hadalgekar. In criminal proceeding, plaintiff no. 1 has admitted that, she was wife of Sanjay Ramu Hadalgekar. Therefore, the application is not maintainable. The proposed

amendment is hit by principal of res-judicata. He lastly prayed for rejection of application.

4. Heard learned advocate Shri. G. J. Patil for plaintiff and advocate Shri. S. R. Powar for defendant.

5. Perused application, say and record.

6. On perusing plaint, it appears that, the plaintiffs have filed present suit for partition and separate possession. The plaintiffs have pleaded that, the plaintiff no. 1 is wife of defendant. The plaintiff no. 2 to 4 have daughters of defendant. The marriage of plaintiff no. 1 was solemnized with defendant.

7. On perusing the written statement of defendant, it appears that, the defendant has denied that, he is husband of plaintiff no. 1. He has denied relationship with plaintiff no. 1. He has denied that, his marriage was solemnized with the plaintiff no. 1.

8. Thus, from the pleading of both parites it appears that, the plaintiff has pleaded that, plaintiff no. 1 is wife of defendant. The defendant specifically denied that, plaintiff no. 1 is wife of him. The proposed amendment shows that, the plaintiffs are wanted to insert pleading in respect of marriage and wanted to insert prayer of declaration that is plaintiff no. 1 is legally wedded wife of defendant.

9. On perusing issues it appears that, the issue in respect of the plaintiff no. 1 is legally wedded wife was specifically framed. The plaintiff by way of proposed amendment wanted to add declaration that is plaintiff no. 1 is legally wedded wife. The proposed amendment wanted by plaintiff because of the defendant has specifically denied that, the plaintiff no. 1 is his wife and his marriage was solemnized with plaintiff no. 1. The defendant specifically denied pleading of

plaintiff. Therefore, the plaintiff wanted to prayed declaration that is the plaintiff no. 1 is wife of defendant.

10. The proposed amendment does not harmful to the defendant. The proposed amendment is necessary to determine real controversy and dispute between the parties. Because the dispute between parties is whether the plaintiff no. 1 legally wedded wife of defendant. The present suit is filed for partition and separate possession. For deciding the suit for partition, it is necessary to decide the legal relationship of plaintiff no. 1 and defendant.

11. Considering all above discussion, I am coming to conclusion that, the proposed amendment does not change the nature of suit. The proposed amendment does not harmful to the defendant. Other hand, the proposed amendment is necessary to determine real controversy and dispute between parties. If application rejected, then the irreparable loss will be definitely caused to the plaintiff. If application allowed, then no irreparable loss will be caused to the defendant. Therefore, I conclude that, the proposed amendment is needs to be allowed.

12. The issues of present suit was framed. The defendant has filed written statement and specifically denied that case of plaintiff. The suit is pending from more than 5 years. Therefore, it is necessary to compensate the defendant. In this circumstances, the application needs to be allowed Subject to cost. Hence, I pass following order,

ORDER

1. The application is allowed Subject to cost of Rs. 2,000/- (Rs. Two thousand only) payable to defendant on or before next date.

2. The permission is granted to the plaintiff for amend plaint accordingly after depositing cost.
3. The plaintiff is directed to carry out amendment within 14 days from depositing the cost.

Date : 23/02/2023.

(S. P. Jadhav)
Civil Judge J.D., Ajara.

Certificate

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. Y.S. Chavan
Name of Court	C.J.J.D. Ajara
Judgment / Order dictated on	23-02-2023
Judgment / Order typed on	23-02-2023
Judgment / Order signed by the P. O. on	24-02-2023
Judgment / Order uploaded on	24-02-2023