

R.C.S. No.63/2016.
Nirmala Vs. Santosh and Ors.
MHKO150002802016.

ORDER BELOW EXH - 50.

Defendants have filed this application to discard evidence of plaintiff witness Shivaji. It is contention of these defendants that, plaintiff has filed this suit for partition and adduce evidence of her P.O.A. Shivaji at Exh-18 and 48. However plaintiff had relinquish her share in the suit property to the mother of defendant no.1 and grandmother Sonubai after receiving 30 tola Gold in presence of panchas. Thus she having no cause to file present suit. The same line of defence taken up by these defendants. Plaintiff having personal knowledge of above facts. Plaintiff on ground of her educational disqualification filed this suit through POA. Thus for elucidating said fact through plaintiff defendants prayed to discard evidence of her POA.

2. Plaintiff strongly opposed to the application by filing her say at back leaf of application. Plaintiff contended that, defendants have filed this false and baseless application. Plaintiff suffering from ailment and high blood pressure, she is unable to attend each date of proceeding. Thus she executed POA in favor of her husband. Plaintiff having every right to contest suit through POA. Plaintiff having equal share in suit properties and defendants to prolong trial filed this application. Thus prayed to reject application with cost.

3. I have heard both sides. They argue in varbitum as per contents of application and say. It is contention of advocate for defendants Shri. Farakate that, the plaintiff merely on ground of her less education filed this suit through POA. She intentionally avoid to face cross examination. She having personal knowledge of relinquishment of her share by obtaining 30 Tolas Gold. Per contra advocate for plaintiff Shri. Palkar vehemently submitted that, plaintiff due to her medical reasons filed this suit through her husband. Defendants have to prove there defence, for that they could not press

plaintiff to adduce her evidence. Plaintiff having choice to adduce evidence. Further witness Shivaji neither depose in respect of personal knowledge of plaintiff. Defendants objected at belated stage. Thus prayed to reject the application.

4. Perused record. Plaintiff filed this suit through her POA and adduced his evidence at Exh. 18 and 48. Now suit is for cross examination of plaintiff witness. It is contention of defendants that, personal facts within the knowledge of plaintiff not deposed by her witness. Plaintiff intentionally avoided to face cross examination. Consider the line of defence of these defendants, they contended that plaintiff had relinquish her share by receiving gold in presence of panchas. Herein pertinent to note that these defendants having every chance to cross examine the witness and adduce there evidence to prove there defence.

5. It is not case of these defendants that, the witness Shivaji in his evidence deposed any fact which is exclusively within the knowledge of plaintiff. The defendants have prove there defence by examining any panch or other. Plaintiff through her husband conduct the proceeding and adduced his evidence. He is the nearest relative of plaintiff. Thus no prejudice would be caused to defendants. Hence in result I do not find any force in the submission of defendants. Thus in result of above discussion I pass following order;

ORDER

1. Application stands rejected.
2. Defendants to cross examine plaintiff witness.
3. Cost in cause, parties to take note.

Date- 12.08.2024.
Place :- Ajara.

(R. P. Thore.)
(J.O.Code 02897)
Civil Judge Jr. Division, Ajara.