

MHLA050000602019



ORDER BELOW EXH.101 IN R.C.S.NO.7/2019
[ANUSAYA ..VS.. THE PRINCIPAL & ORS.]

The application is submitted under Order-XL read with Section 151 of C.P.C.

2. The plaintiff has submitted that, she has filed the suit for the declaration of her status to be the first wife of Mohanrao Jagtap. Late Mohan was working with Shivaji Mahavidyalaya. After his demise, plaintiffs are the only legal successors. Defendant No.5 is getting the pensionary benefits of late Mohanrao, though plaintiff No.1 is alive, who is the first wife. The father of Mohanrao has admitted that, Janabai is the second wife of Mohanrao in R.C.S.No.36/1982. There are ample documents which are proved to show that Janabai is the second wife.

3. The High Court has made the matter time bound but defendant is prolonging the matter to avoid to pay pension to the plaintiff. The pension is received illegally by defendant No.5 Janabai. So it is prayed that, the receiver may be appointed to collect monthly pension from the competent authority till disposal of the suit.

4. Say is filed by the defendant no. 5. According to her, the contents in the application are false. The temporary injunction application of the similar nature is rejected by the Court. There is no substantial ground to appoint a receiver.

There is no interim relief in favour of the plaintiff. Hence, the application may be rejected.

5. Heard Advocate Shri.D.A.Sabane for the plaintiff. He relied upon the Exh. 67, 84 and 99 and submitted that this is ample evidence to prove that the plaintiff is the first legally wedded wife of late Mohanrao. The defendant No.5 is illegally obtaining pension. He submitted that, the pension be deposited with the Principal of the college so as not to utilize it by the defendant No.5.

6. Per contra, Advocate Shri.D.L.Ghogare for defendant No.5 submitted that, the application is not maintainable as there is no ground to appoint receiver. Hence, it may be rejected.

7. As per Order-XL Rule-1 of the Civil Procedure Code, 1908, the receiver can be appointed by the Court if it is just and convenient. The discretion is totally left with the Court whether to appoint a receiver or not.

8. Receiver may be appointed regarding a property. If Rule-1 of Order-XL is read, the appointment of receiver can be made regarding the property and for no other thing. The property is not any property but it must be the property in dispute. The plaintiff has nowhere mentioned in his plaint what kind of property is put in dispute. Pension is the subject matter in the suit. But it is not the property expected in Order XL. The property mentioned in Order-XL Rule-1 is

immovable property and nothing else. So claiming a right of pension after declaring of status as the first wife does not come within purview of the term **Property** which is expected under Order-XL Rule-1 of C.P.C. Therefore, the Order of receiver cannot be passed in such case.

9. Already an application below Exh.5 was given by the plaintiff and decided by this Court wherein the relief of the plaintiff restraining defendant Nos.2 to 4 from giving family pension to defendant No.5 was rejected. So the application to appoint a receiver is the second round of litigation to claim the similar relief. Basically the plaintiff cannot rely upon the proved document to claim interim relief. Appointment of receiver is an interim relief which has to be dealt with on the prima-facie proof and not upon the documents which are put into scrutiny and evidence is led upon it. So the application is not tenable in the eyes of law.

10. Learned Advocate for the plaintiff has relied upon the Mrs.Gyanbai W/o. Devidasrao Kondagir ..Vs.. The State of Maharashtra & Ors. W.P.No.5252/2022 and Santhi ..Vs.. The Secretary to Government & Ors. W.P.No.32556/2014 of Madras High Court. The facts and circumstances of both these matters are different. They are regarding pensionary benefits but are the conclusions on challenges before the Hon'ble High Courts on final verdicts. They are relating to the question be decided regarding the status of the first wife. In appropriate cases, the citations shall help but not to the

present applicant to decide this application. Therefore, with the above reasons, I pass the following order -

ORDER

The application is rejected.

Sd/-

Date:23/04/2025.

[S.N.Sarde]

Civil Judge Senior Division, Ahmedpur.