

MHLA110006952010



Order below Exh.180 in RCS No.160/2010

Nirmalabai Vs. Shalubai

This is an application filed by plaintiffs under Order 14 for striking out existing issue Nos.1, 3, 6 and 7, on the grounds mentioned in the application. The contents of application in short are:- that the plaintiffs have filed this suit for partition and separate possession and they have specifically pleaded in the plaint that deceased Dinkar Daulatrao Biradar married plaintiff No.1 on 11/01/1987 as per Hindu rites and ceremonies. Plaintiffs have pleaded that defendant No.1 Shalubai is second wife of deceased Dinkar Daulatrao Biradar. That defendants in their WS below **Exh.53** have denied the status of the plaintiffs but they have failed to disclose the date of marriage of defendant No.1 with deceased Dinkar Daulatrao Biradar. According to rival pleadings of both the parties, Issues are framed and on 16/01/2020 re-casted issues came to be framed.

2. That issue Nos.1 and 3 requires to be deleted because if issue No.1 is proved then ultimately issue No.3 is not proved. Issue Nos.1 and 3 needs to be replaced by proposed issue i.e. 'Who is legally wedded wife of deceased Dinkar Daulatrao Biradar?'. That issue Nos.6 and 7 are also framed in negative manner and they are also required to be substituted by proposed issue i.e. 'Whether heirship certificate in Civil M.A.No.37/2002 is recognition of heir of late Dinkar Daulatrao Biradar and it is binding upon plaintiffs and defendants?'. Hence, the application.

3. Defendant Nos.1 to 3 have filed their say and raised strong objections. The contents of their say in short are:- that plaintiffs have pleaded that plaintiff No.1 is legally wedded wife of deceased Dinkar Daulatrao Biradar and defendant No.1 is his second wife. It is quiet natural that burden of proving the status is upon a person who asserts particular fact and this Court has rightly framed issues on the basis of pleadings of the parties. Defendants have not submitted counter claim in the suit and hence, the burden of proving the fact of legally wedded wife should not be shifted upon the defendants. It is bounden duty of plaintiffs to prove their pleadings by cogent evidence. The issues are rightly framed and there is no need to interfere by way of either

deleting or adding issues. If the prayer is allowed then it would cause prejudice on the rights of the defendants. Hence, prayed that application may be rejected.

4. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for partition and separate possession in respect of suit properties mentioned in para No.1 of the plaint. Plaintiffs have contended that plaintiff No.1 married deceased Dinkar Daulatrao Biradar on 11/01/1987 according to Hindu rites and ceremonies. Plaintiff Nos.2 and 3 are the children born out of said wedlock. Defendant Nos.1 to 3 have filed their WS at **Exh.27** and contended that defendant No.1 is legally wedded wife of deceased Dinkar Daulatrao Biradar. Her marriage was solemnized in the year 1984 at village Takali as per customs of Hindu religion. It is further contended by defendant Nos.1 to 3 that plaintiff No.1 had married with Venkat Mirgude, R/o. Village Tadmugali and out of this wedlock she gave birth to a female child namely Jyoti Venkat Mirgude. It is also contended that Venkat Mirgude died 25 years ago and after his death, plaintiff No.1 left her matrimonial home and started residing at Latur.

5. On the basis of rival contentions of both the parties, Issues are framed at **Exh.40** on 01/07/2011. However, later on, on 16/01/2020 the entire Issues came to be re-casted and the existing issue No.1 is in respect of the fact whether plaintiffs prove that plaintiff No.1 is legally wedded wife of deceased Dinkar Daulatrao Biradar and the existing issue No.3 is whether plaintiffs prove that defendant No.1 is second wife of deceased Dinkar Daulatrao Biradar. After going through contents of plaint and WS, one thing which is noticed is that both plaintiff No.1 and defendant No.1 are claiming to be legally wedded wife of deceased Dinkar Daulatrao Biradar.

6. Plaintiffs are claiming that deceased Dinkar Daulatrao Biradar had brought defendant No.1 when the marriage between plaintiff No.1 and deceased Dinkar Daulatrao Biradar was still in existence. In short, the main dispute between the parties seems to be as to who is legally wedded wife of deceased Dinkar Daulatrao Biradar, as both of them i.e. plaintiff No.1 and defendant No.1 are claiming to be the legally wedded wife of deceased Dinkar Daulatrao Biradar. In such situation, instead of putting burden on both the parties to prove the said fact, in my opinion, an neutral issue as

suggested in the application will suffice the purpose. Therefore, it is necessary to strike out existing issue Nos.1 and 3 and an neutral issue as suggested in the application requires to be framed.

7. So far as, the claim of plaintiffs in respect of issue Nos.6 and 7 is concerned, in my opinion, these issues are framed on the basis of pleadings made in the plaint and it requires no interference by this Court. Plaintiffs have specifically contended that the heirship certificate has been obtained by defendants behind back of plaintiffs. For these reasons, I pass following order:-

ORDER

1. Application is partly allowed.
2. Existing issue Nos.1 and 3 are hereby striked out and issue as suggested in the application is framed and it is numbered as Issue No.1 at **Exh.40**.
3. All the issues are hereby renumbered.
4. No order as to costs.

Date :07/11/2024

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.