

MHLA110016252018



Order below Exh.51 in RCS No.498/2018

By this application plaintiff has requested to set aside the order dated 18/03/2024 by which the evidence of her witness namely Shri Pratap Ingle came to be discarded, on the grounds mentioned in the application. Defendants have filed their say and raised objections. 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 plaintiff has filed this suit for declaration and cancellation of decree passed in RCS No.562/2015. Defendants have filed their WS at **Exh.11**. Issues are framed at **Exh.13** on 24/11/2016.

2. Plaintiff examined herself at **Exh.33** on 15/01/2020. Her cross examination came to be completed on 22/07/2022. Thereafter, plaintiff examined Jaijit Shahaji Jagtap as PW No.2 at **Exh.36**. Plaintiff further examined Shri Dattatray Kallore as PW No.3 at **Exh.43**. Shri Pratap Ingle came to be examined as PW No.4 at **Exh.47** on 29/11/2023. The application filed by plaintiff at Exh.49 seeking adjournment came to be rejected on 18/03/2024, which resulted in discarding the evidence of Shri Pratap Ingle at **Exh.47**. Record further shows that thereafter on 19/06/2024 the evidence of plaintiff came to be closed. In fact, plaintiff ought to have sought relief of setting aside the evidence close order dated 19/06/2024 coupled with the request to set aside the order dated 18/03/2024 discarding the evidence of Shri Pratap Ingle at **Exh.47**. Learned advocate Shri Makane submitted that because of oversight plaintiff failed to seek the former relief and requested to consider the said relief vide present application, although it is not expressly claimed.

3. Record further shows that present application came to be moved on 16/07/2024 i.e. approximately after more than 4 months of passing impugned order. Taking into consideration grounds stated in the application, nature of suit, reliefs claimed and to grant an opportunity of fair trial, in my opinion, it is necessary to set aside both the orders dated 18/03/2024 and 19/06/2024, although the latter is not claimed. However, while doing so the delay caused by plaintiff cannot be neglected and for that purpose it is necessary to saddle cost upon plaintiff. For these reasons, I pass following order:-

ORDER

1. The orders dated 19/06/2024 and 18/03/2024 passed against plaintiff are set aside and the evidence of Shri Pratap Ingle at **Exh.47** be again read and recorded, as he is present and verified by the Court, subject to cost of Rs.500/- to be payable by plaintiff to defendants today itself.
2. After payment of cost amount and its acknowledgment by defendants, necessary order is passed below **Exh.47** and Exh.1.

Date :01/08/2024

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