

MHSN020016272015



ORDER BELOW EXH 45 IN RCS No. 427/2015

(Shabbir Sanadi & Ors v. Zakirhusen Jamadar & Ors)

1. This is an application for setting aside the order below Exh. 22 passed in this suit which transposed defendant No. 4 to 7 in the array of plaintiffs. According to plaintiffs, there was no need to felt for the transposition. This application is resisted by defendant No. 1 and 2. According to defendants, defendant No. 4 to 7 have not complied the order. Therefore, the order itself comes under the category of non complied order. Defendant No. 4 to 7 have independent right to institute suit. The suit is for declaration, possession and injunction. Hence, this application is not tenable.

2. Heard the learned counsels at relevant length. The order below Exh. 22 was passed long back i.e. on 21/09/2017. The application Exh. 22 was moved by defendant No. 4 to 7 under Order I Rule 8 of CPC. The said mandate is with regard to the representative suit. This suit is for declaration, possession and perpetual injunction. Plaintiffs No. 1 to 3 have no case that, they have instituted the suit on behalf of defendant No. 4 to 7. There is a complete different procedure under Order I Rule 8 of CPC in respect of representative of suit. Plaintiffs and defendant No. 4 to 7 are not similarly situated persons. The said application at Exh. 22 was also not under Order 23 Rule 1A of CPC. It is limpid from the order of my learned predecessor that, *defendant No. 4 to 8 were allowed to be added as plaintiffs. Plaintiffs were directed to comply with necessary procedure.*

3. It is apparent at Exh. 22 was not for transposition of defendants No. 4 to 7 as plaintiffs. The order below Exh. 22 adds one more person i.e. defendant No. 8 who is actually not a party to application

Exh.22. Albeit, the order is suffering patent irregularity, this Court cannot reverse or set aside the said order. The only question arises is regarding the legal sanctity of this order. Obviously, the order is not legally tenable because the relief has never been sought in the representative character. Now this Court cannot *suo moto* venture into the domain of Order 47 Rule 1 of CPC. The moot question arises is to what extent an order which is itself irregular can be relied and could be expected for reliance. Plaintiffs were directed to comply the order below Exh. 22. Plaintiffs did not comply within time to amend the pleading. Therefore, the rights for amendment stands forfeited under Order 6 Rule 18 of CPC. It can be assumed that in this matter due to failure of plaintiffs No. 1 to 3 to comply the order, the rights of amendment stood forfeited. So also defendant No. 4 to 7 did not appear in this matter for knowing the fate of this application, their right gets forfeited. Cumulatively, for the want of steps of all and sundry, the order below Exh. 22 becomes infructuous and otiose meaning thereby it is *non est*. The order below Exh. 22 will have to be kept in abeyance because the suit is not a representative suit. Resultantly, I proceed to pass the following order.

	<u>ORDER</u>
1.	Application Exh. 45 is partly allowed.
2.	The order below Exh. 22 being irregular and not related to the present suit but related to Order 1 Rule 8 of CPC and because of the fact that this suit is not a representative suit, the said order be kept in abeyance without attaching any legal effect to it.
3.	Plaintiffs No. 1 to 3 to take necessary steps in the context of defendant No. 4 to 8 for the sake of their appearance before the Court because this matter is restored.
4.	Suit be kept for further steps.

Date: 14/06/2024

(Wahab A. Syed)
2nd Jt. Civil Judge Junior Divison,
Sangli.

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- A.P.Patil.

Name of the Court :- 2nd Jt. CJJD, Sangli.

Date of decision :- 14.06.2024

Order signed by P.O. on :- 14.06.2024

Order uploaded on :- 14.06.2024