

RCS No.25/2013
Prabhakar+3-Vs-Panjab+5

ORDER BELOW EXH.33 IN RCS No. 25/2013
PASSED ON THIS 17th DAY OF DECEMBER, 2015.

- 1) The defendant No. 4 & 6 have filed this application for setting aside order passed below exh.18 on 26/11/2015 and seeking permission to amend written statement.
- 2) Perused the application and say of plaintiff as well as say of defendant no.1 to 3. Heard Ld.Adv Shri. Godse for defendant no. 4 and 6, Ld.Adv.Shri.Parekar for Defendant no. 1 to 3 and Ld.Advocae Shri.S.P.Deshmukh for plaintiff.
- 3) Upon perusal of record and proceedings of the suit, it appears that, defendant no. 4 to 6 have filed application below exh.18 for seeking amendment in their W.S. Said application is allowed on 3/09/2015 and defendants are directed to carry out amendment within limitation i.e. within 14 days from the date of order. However they not carried out amendment as directed. Therefore on 26.11.2015 order is passed below exh.18 regarding suit will proceed without amendment of defendant no. 4 to 6 in their W.S. In this application according to defendant no.4 and 6, defendant no.5 is expired and her legal heirs are required to be brought on record. Defendant no. 4 and 6 want to engage new advocate. Therefore they could not carried out amendment as directed. The opportunity of hearing is to be given to the defendant No.4 and 6. Best available evidence should be come before the Court and suit is to be decided on merit. Therefore, in order to avail opportunity of hearing the order passed below exh.18 on 26/11/2015 is to be set aside. On the other hand no any prejudice will caused to the plaintiff if said order is set aside. Moreover, it will be helpful to adjudicate issues properly. Therefore, in the interest of justice I am of the opinion that this application is required to be allowed. Therefore this application is liable to be allowed. The plaintiff filed their say and stated that suitable order be passed. However defendant no.1 to 3 objected this application strongly. However the plaintiffs are only contested parties to this application. However the plaintiffs not strongly contested. Still I am of the opinion that, due to this application delay is cause for proceeding of this suit. Therefore cost of Rs. 2,00/- (Two hundred) is required to be imposed on defendant no.1 and said cost is to be paid to plaintiff. Hence I pass following order.

ORDER

- 1) This application is allowed subject to cost of Rs.200/- (Two Hundred) to plaintiffs.
- 2) The order passed below exh.18 on 26/11/2015 is set aside and permission to carry out amendment in W.S. Of defendant no.4 and 6 is granted.

(Pronounced in open Court)

Date.17.12.15

(D.N.CHAMLE)
Civil Judge (Jr.Dn.)
Mahagaon.

