

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1408 of 2016

Date of decision : February 25, 2016

Raj Kumar

..... Petitioner

Versus

Soma Devi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Deepak Verma, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the dismissal of the application filed under Order 14 Rule 5 CPC seeking indulgence of the trial court to frame following two additional issues by placing onus on defendant No.1:-

“i) Whether defendant No.1 got legal divorce from defendant No.2 as alleged?OPD1.

ii) Whether defendant No.1 had solemnized marriage with the plaintiff on 5.7.2006 as per Hindu rites and rituals?OPD1.”

Learned counsel appearing on behalf of the petitioner submits that the claim in the suit is for declaration to the effect that respondent No.1-defendant No.1 is legally wedded wife of defendant

No.2 and there is no marriage between plaintiff and defendant No.1 and marriage between the defendants still subsists. The framing of the aforementioned additional issues is necessary and essential for the reason that in the written statement, it has been stated that marriage between defendant Nos.1 and 2 came to an end through a customary divorce vide writing dated 26.7.2005. Respondent No.1 married to the plaintiff and these facts have not been appreciated by the trial court while declining the application despite the fact that defendant No.1 had initiated proceedings under the Domestic Violence Act, 2005.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that on the basis of variance between the parties to the *lis*, after going through the pleadings of the parties the trial court on 11.2.2012 framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP*
- 2. Whether suit of plaintiff is not maintainable in the present form?OPD*
- 3. Whether plaintiff has not come to Court with clean hands and has suppressed material and real facts from the Court?OPD*
- 4. Whether the plaintiff estopped from filing the suit by his own acts and conduct?OPD*
- 5. Whether plaintiff has no locus standi and cause of action to file the present suit against defendant No.2?OPD”*

Thereafter additional issue No.5-A was framed on 4.4.2013 as under:-

5-A. Whether the marriage between defendant No.1 and 2 come to an end through a legal and valid writing dated 26.7.2005 through a customary divorce as alleged?OPD

On comparison of the issues already framed and the proposed issue, I am of the view that issue No.5-A is of wide amplitude and it take care of the apprehension appearing in the mind of the petitioner-plaintiff. Viz-a-viz relief sought in the suit, issue No.1 would take care of it.

In view of above, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

February 25 , 2016
archana