

Mr. V. S. Talkute for Petitioners.
Mr. A. A. Joshi for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 17, 2017

Heard Mr. Talkute, learned Counsel for petitioners and Mr. Joshi, learned Counsel for respondents No.1 and 2 at length. Rule. Mr. Joshi waives service for respondents No.1 and 2. Mr. Talkute states that respondents No.1 and 2 being the original plaintiffs are the only contesting respondents. He, therefore, prays for deleting respondents No.3 to 10 from this Petition. On the motion made by Mr. Talkute, leave to delete respondents No.3 to 10 is granted. Amendment shall be carried out forthwith. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.2 to 5', have challenged the judgment and order dated 05.02.2016 passed by the learned 2nd Joint Civil Judge, Junior Division, Pandharpur below exhibit-151 in Regular Civil Suit No.190 of 1997. By that order, the learned trial Judge rejected the application filed by the defendants under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. Mr. Talkute submitted that the learned trial Judge referred to paragraph 6 of the written statement as also the evidence of defendant No.1-C Shamal. In written statement as also evidence, it is stated that defendant No.1 Digambar married to Rukmini in the year 1971. By the proposed amendment, defendants No.2 to 5 contend that marriage was solemnized in the year 1965. By permitting amendment, it will amount to withdrawal of the admission given by the defendants' witness. He submitted that defendants have not established as to what difference it would make after substituting the year of marriage from 1971 to 1965. For all these reasons, he submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Joshi supported the impugned order. He submitted that the Suit is instituted in the year 1997 and the present application for amending the written statement is filed in the year 2012. Having regard to the delay caused in filing the application for amendment, the learned trial Judge was justified in rejecting the application. In any case, he submitted that costs may be imposed on the defendants.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is evident from record that in paragraph 6 of the written statement, it was averred that defendant No.1-Digambar married Rukmini, daughter of Baburao Sopan Shelke in the year 1971. Defendant No.1-C Shamal filed his affidavit of evidence at exhibit-171 on 17.01.2014. In paragraph 5, he deposed that defendant No.1 Digambar married Rukmini in the year 1971. By the proposed amendment, defendants No.2 to 5 want to substitute year 1971 in paragraph 6 of the written statement by the year 1965 on the ground that

it is a typographical error. Plaintiffs were not in a position to demonstrate that any difference will be made in case the year of marriage of 1971 is substituted by the year 1965. Having regard to the fact that the Suit is instituted prior to C.P.C. Amendment 2002, the learned trial Judge was not justified in considering the application post 2002 Amendment of C.P.C. That apart, the learned trial Judge was also not justified in observing that defendants want to withdraw the admissions given in the evidence as basically, as indicated earlier, nothing turns on the year of marriage of defendant No.1 with Rukmini, either in 1971 or 1965.

6. In view thereof, impugned order dated 05.02.2016 deserves to be set aside and is accordingly set aside. Application exhibit-151 is allowed. Amendment in the written statement shall be carried out within 14 days from today. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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