

**:: ORDER BELOW EXH. 36 ::**  
**(Passed on 15/09/2023)**

Defendant No. 1 to 3 filed the present application under Order 7 Rule 11 of the Code of Civil Procedure.

2] Plaintiff objected the application by filing reply by vide Exh. 39.

3] Ld. Adv. for defendant Shri. Chaube has submitted that the plaintiff filed the bogus suit in order to harass the defendant. He has further drawn my attention towards the prayers of the suit. According to him, the prayer No. 1 is in respect of the declaration of name of defendant No. 3 is wrong and unlawful and can not be granted by this court. He has further submitted that the Civil Judge Senior Division, Sangli has given the permanent custody of child to defendant No. 1. It is not disputed that the plaintiff is biological father of defendant No. 3. The defendant No. 1 is natural guardian of the defendant No. 3. He has further submitted that the mother has every right under the Hindu Guardian and Wards Act. The prayer No. 4 is unlawful as the Adhar Card is already issued on the name of defendant No. 3 by Sanchita Savita Maniyar. He has further submitted that the prayer No. 5 is in respect of the direction to the defendant no. 6 Ashwini International School. He has submitted that there is no such order of Civil Judge Senior Division, Sangli in respect of the continuance of paternal name neither plaintiff claim in his pleading. Therefore, the relief is not maintainable.

4] Ld. Adv. Shri. Chaube has further submitted that there was divorce between plaintiff and defendant No. 1 in 2019. The present dispute arise out of the matrimonial issue and therefore, Family Court has jurisdiction under Section 7 of the Family Courts Act 1984. He has relied on the Section 7 (1) (d) of the Act and submitted that the jurisdiction of Civil Court is barred.

5] He has further relied on the law laid down in the matter of **Riddhiben Kishorchandra Desai V. District Education Officer, 2016 SCC OnLine Guj 3979**, the Hon'ble Gujarat High Court has laid down in this matter that the statutory provision also provided that in case of minor daughter the mother is natural guardian and would have the custody, the mother would be entitled to record her name. It further laid down that the respondent do not have the custody, therefore, he can not object for the recording of name of mother to the official record. Ld. Adv. Shri. Chaube has further submitted that in the present matter the custody is with mother, therefore, plaintiff has no right to take the objection to the name recorded by the mother. He has further submitted that this court has no jurisdiction to entertain the suit. Hence, plaint shall be rejected. It is the matter of adjudication whether permission of plaintiff would require to defendant No. 1 for change of the name. The present application is for rejection of the plaint. The above judgment is silent in respect of the rejection of the plaint. Therefore, it is not applicable to the present matter at this stage.

6] Ld. Adv. Shri. Deshpande for plaintiff has filed the written argument. He has also made oral submissions. He has

submitted that the present application is not maintainable. He has further admitted that there was a divorce by the mutual consent between the plaintiff and defendant No. 1 and the custody of defendant No. 3 was permanently given to the defendant No. 1. The plaintiff has visitation rights and he has to pay the maintenance of Rs.11,000/- p.m. He has further submitted that the defendant No. 1 never permitted the plaintiff to access his visitation rights to defendant No. 3. Defendant No. 1 performed the remarriage with defendant No. 2. She is trying to give the adoption of defendant No. 3 to defendant No. 2 and change her name as Sanchita Sahil Maniyar and for that purpose the defendant No. 1 made the changes in to the Aadhar Card of defendant No. 3. She has also made the declaration in the gazette dated 09/12/2021 without consent of plaintiff. He has further submitted that therefore, there is a cause of action to file the suit.

7] He has further submitted that the defendant No. 1 applied to the passport of defendant No. 3 by showing single parent. The plaintiff has objected before the passport authority. His further contention that the plaintiff is biological father of defendant No. 3 and without his consent her name can not be changed. He has further submitted that the parties are residing in Pimpri Chinchwad Corporation area for which there is no family court has been established. Therefore, there is no issue of jurisdiction of family court. He has further submitted that the court has jurisdiction to entertain the present suit. The suit is not barred by any law. He has further submitted that application shall be rejected.

8] I consider the following points for my determination and record my findings thereon with reasons mention as under : -

Sr.No	Points	Finding
1	Whether defendant has made out the case that the plaint is barred by law and thereby deserves to be rejected under Order 7 Rule 11 of the Code of Civil Procedure ?	No.
2	What order ?	As per final order.

**As to point No. 1 -:**

9] Defendants contention that this court has no jurisdiction. Defendant relied on the Section 7 of the Family Court Act and submitted that in view of Section 7 of the Family Court Act the suit relating to the injunction arise from the matrimonial relationship will go to the Family Court. Plaintiff contended that the parties are residing in the PCMC area. The Family Court is not established for the said area. Therefore, there is no bar of Section 7 of the Family Court Act.

10] It is admitted position that Family Court of Pune has no jurisdiction for the cases in respect of the PCMC area. It is admitted position that both parties are residing in the area of PCMC. Therefore, though the nature of dispute is govern by the Section 7 of the Family Court Act, there is no Family Court established in the said area. Hence, there is no bar under Section 7 of the Act to entertain the present plaint.

11] Defendant further contended that the reliefs claimed by the plaintiff are not maintainable and therefore, the suit is not maintainable. In respect of the prayer A the defendant contended that the said prayer is wrong. The prayer A in the plaint is specific in respect of the declaration as to the name of defendant No. 3. It is the declaratory prayer govern by the Section 34 of the Specific Relief Act. Prima facie it can not reflect that there is any illegality while claiming the said prayer.

12] The prayer clause B as to the declaration that defendant No. 3 is a daughter of plaintiff. It is admitted position that the defendant No. 3 is the biological daughter of plaintiff and defendant No. 1. So, there is no issue in respect of the prayer clause B. Plaintiff claimed in prayer clause C that the defendant No. 1 and 2 be restrained from changing the name of defendant No. 3. It is the matter of adjudication. The decree of mutual consent is silent in respect of the change of the name of daughter. So, on this point the adjudication is necessary.

13] Plaintiff's averment that though he is biological father, the defendant No. 1 without his consent has changed the name of defendant No. 3 and shown the name of defendant No. 2 as a father. Though, she was not lawfully adopted by defendant No. 2. It is the matter of adjudication whether plaintiff is entitled for the said relief or not. It is in respect of his legal right as a father. There is no illegality in claiming the said relief.

14] Plaintiff has unnecessary impleaded the defendant No. 4 to 6. It is the contention of defendant that on the said

ground plaintiff shall be rejected. The defendant No. 4 and 5 are belongs to the Union of India and defendant No. 6 is the private school. If these parties are unnecessary added and the defendant can moved the application to striking out these parties. This is not the ground to reject the plaintiff under Order 7 Rule 11.

15] Plaintiff filed the suit by mentioning Order 39 Rule 1. Defendant has taken the objection that the suit is not maintainable under particular provision. By quoting any particular provision, any title clause by the plaintiff in the plaintiff does not mean that the court has to consider the suit only under the particular provision. The court has to read entire plaintiff and apply the law. The court is not bound by the provision mentioned by the plaintiff in clause title. Order 39 is about the temporary injunction. The suit for the injunction and declaration are filed under the provision of Specific Relief Act and not under Order 39. This is not the appropriate ground to reject the plaintiff. Moreover, Order 6 of the C.P.C. provides that the pleading shall contents the material facts in concise form so, it is not required to plead the law. It is not obligatory on the part of plaintiff that he shall court the provision of law in plaintiff. Considering all these reasons defendant has not established that suit is barred by any law and plaintiff is deserves to be rejected under Order 7 Rule 11 of the C. P. C. Hence, I answer point No. 1 in the negative.

**As to point No. 2 :-**

16] Considering the findings of point No. 1, I pass the following order :-

**ORDER**

Application is rejected.

Pune  
Dt. 15.09.2023

(Dr. D. U. Dongare)  
5<sup>th</sup> Jt. Civil Judge S. D., Pune

**CERTIFICATE**

“I affirm that the contents of this P.D.F. file Judgment/  
order is same word for word as per original Judgment/ order.”

Name of the Court :- Shri. Dr. D. U. Dongare  
5<sup>th</sup> Jt. C.J.S.D., Pune

Name of the Steno :- Sau. M. K. Chaudhary

Date of Judgment/ Order :- 15/09/2023

Judgment/ Order Signed  
by P.O. on :- 15/09/2023

Judgment/ order uploaded on :- 15/09/2023