

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CIVIL REVISION APPLICATION NO. 202 OF 2013
WITH CA/10165/2014 IN CRA/202/2013**

**RAJESH MAHALING SWAMI AND ANOTHER
VERSUS
NILKAMAL DAYANAND SWAMI AND ANOTHER**

...

Advocate for Petitioners : Mr. Urgunde Suhas P.
Advocate for Respondents 1 and 2 : Mr. A. S. Deshpande

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. Mr. Urgunde, the learned counsel for the applicant states that at belated stage, the respondent plaintiff sought withdrawal of the suit with liberty to file fresh suit on the same cause of action. According to the learned counsel, the facts which can be brought on record by way of amendment, for the same the Court cannot allow withdrawal of suit with liberty to file fresh suit on the same cause of action.

2. Mr. Deshpande, the learned counsel submits that two properties inadvertently could not be included as suit properties. As the suit should not fail on account of formal defect, the application was filed and the court has rightly considered the said aspect. The contention of the applicant herein that if the facts can be introduced by way of amendment, for the said fact, the party need not withdraw the suit with liberty to file fresh suit, needs to be considered.

3. The plaintiff could have filed application for amendment seeking introduction of the said two properties in the original plaint. It is only if the said amendment application is not considered, then the applicant was required to file application under Order 23 for withdrawal of the suit with liberty to file fresh suit on the same cause of action.

4. There is no impediment for the plaintiff to file application for amendment seeking introduction of the said two properties as suit properties in the plaint.

5. In the result, the impugned order is quashed and set aside. The plaintiff is at liberty to file application for amendment seeking leave to introduce the two properties as suit properties in the plaint which application shall be considered by the Court in the light of the observation made herein above.

6. The Civil revision application is accordingly disposed of No costs. Civil applications also disposed of.

(S. V. GANGAPURWALA, J.)

JPC