

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

20 CIVIL REVISION APPLICATION NO. 188 OF 2015

SUMANBAI GANPAT RASHINKAR AND OTHERS

VERSUS

BHAGIRATHIBAI BHIKA KARDILE DIED THROUG LRS BHIKAJI
TUKARAK KARDILE AND OTHERS

...

Advocate for Petitioners : Mr. Pathan Zafar M
Advocate for Respondent No.2 : Mr. D. G. Nagode

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CORAM : S. V. GANGAPURWALA, J.

DATE : 29th September, 2015

PER COURT :

1. The application under Order 7 Rule 11 of the Code of civil Procedure filed by the present petitioners is rejected.

2. Mr. Pathan, the learned counsel for the petitioners submits that the application for rejection of plaint was moved under order 7 Rule 11 (A) and (D) of the Code of Civil Procedure. Initially, the plaintiff /respondent had filed a suit for simplicitor injunction which was subsequently bearing No. 145/2012. The said suit was withdrawn and thereafter fresh suit is filed. Though the earlier suit is withdrawn with liberty to file fresh suit on the same cause of action, the fresh

suit filed is on different cause of action which is not permissible.

3. The learned counsel further submits that the suit ought to have been filed before the Civil Judge, Junior Division. The TILR and the Collector are made party, though no relief is sought against them. Thus, such a suit is not maintainable before the Civil Judge Senior Division. The learned counsel further submits that when no relief is claimed against the State authorities, the suit was bad for mis-joinder of parties.

4. Mr. Nagode, the learned counsel supports the order.

5. The earlier suit filed by the plaintiff was withdrawn with liberty to file fresh suit on the same cause of action. The said application was allowed. Relief of injunction is based on continuing cause of action. As such, the said argument of the petitioners cannot be sustained.

6. As far as aspect of mis-joinder of parties is

concerned, the suit cannot be dismissed on account of mis-joinder of parties in view of Order 1 Rule 9 of the Code of Civil Procedure. Be that as it may, the petitioner can move appropriate application in that regard. However, the same would not entail dismissal of the suit.

7. In the light of above, the revision application is disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC