

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6678 OF 2003

Vishwanath S. Dalvi & Anr.	..	Petitioners
VS.		
Sou. Shalan R. Kirve & Ors.	..	Respondents

None for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 29 APRIL 2015

P.C. :-

1] This petition challenges order dated 23 July 2003, by which the Joint Civil Judge, Junior Division, Vaduj, has held that the suit is maintainable. The contention raised by the petitioners was that the suit which was instituted by the plaintiffs seeking partition of the suit properties during the lifetime of his father, was not at all maintainable. The learned Civil Judge, has held that admittedly the father of the plaintiff expired during the pendency of the suit and consequently, taking into consideration this subsequent event, the suit is very much maintainable.

2] The position in law is that the right to relief must be adjudged to exist on the date of institution of the suit. However, there is no legal bar to take into consideration subsequent events, particularly when said subsequent events will contribute to the reduction or multiplicity of proceedings. There is no dispute that the father of the

plaintiff having expired, the plaintiffs will have the right to sue for partition of the suit properties. In such circumstances, it cannot be held that the impugned order is vitiated by any jurisdictional error or perversity of approach when it observes that no useful purpose would be served by dismissing the suit on basis of such technicality and driving the plaintiffs to institute a fresh suit for the same purpose.

3] This petition is accordingly dismissed. There shall be no order as to costs.

4] Considering that the suit is of the year 1996, the learned Civil Judge is directed to dispose of the same, as expeditiously as possible and in any case within a period of eighteen months from today.

5] Since, neither the parties nor their Advocates have chosen to appear in the matter, the Registry to intimate the Joint Civil Judge, Junior Division, Vaduj, of the order made, by way of forwarding authenticated copy thereof, for implementation.

(M. S. SONAK, J.)