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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 46 OF 2014

Smt.Sushila Annaso Chougule and others … Applicants

Vs.

Shri Nemanna Mukunda Chougule and others … Respondents

Mr.Amit M.Shete, Advocate for Applicants.

CORAM : R. G. KETKAR, J.
DATE : 17th AUGUST, 2015

P.C. :

. Heard Mr.Amit M.Shete, learned Counsel for the applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 1 to 8 have challenged the judgment and order dated 07/02/2013 passed by the learned Civil Judge, Junior Division, Kurundwad below Exhibit 1 in Misc. Civil Application No. 20 of 2009. By that order, the learned trial Judge allowed the application filed by the original plaintiff under Order 9 Rule 4 of C.P.C. for restoration of Regular Civil Suit No. 111 of 1994.

3. Mr.Shete submitted that the learned trial Judge was not justified in restoring the Suit and no sufficient cause is made out for absence of the plaintiff. He submitted that in case the Court is

inclined to dismiss the Civil Revision Application, the learned trial Judge may be directed to disposed of the Suit in a time bound manner as Suit is of the year 1994 and plaintiff is more than 82 years old.

4. By the impugned order, the learned trial Judge allowed the application and restored the Suit at its original stage subject to costs of Rs.1,000/- to be paid by the plaintiff to defendants No. 1 to 4 and 13 equally. Perusal of the impugned order and in particular paragraphs 3 & 4 shows that defendant No.10 filed application Exhibit 125 for transposing him as a plaintiff. The matter was adjourned till 10/06/2009 for compliance of the order below Exhibit 125. Defendant No. 10 failed to comply that order. The matter was adjourned till 20/07/2009 and thereafter to 23/07/2009. The Suit was dismissed for want of compliance. The plaintiff thereafter moved application for restoration on 28/08/2009. By the impugned order, the learned trial Judge allowed the application subject to imposing costs of Rs.1,000/-. In view of the material on record, I do not find that the learned trial Judge has committed any error in passing the impugned order. The order is purely discretionary. It cannot be said that the learned trial Judge exercised the discretion perversely, arbitrarily and capriciously. Hence, no case is made out for invocation of powers under Section 115 of the C.P.C.

5. Having regard to the fact that the plaintiff is more than

82 years old as also having further due regard to the fact that Suit is of the year 1994 for partition, if application for expeditious disposal of the Suit is filed by either of the parties, the learned trial Judge will pass appropriate orders in the light of the controversy and in the light of the observations made herein. Subject to this, Application fails and the same is rejected.

(R. G. KETKAR, J.)