

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6211 OF 2015

Shri Vishwanath Shankar Patil

Petitioner

Vs

Late Shinwar Bhika Patil and
Ors.

.. Respondents

Mr. Sanjay S. Patil, Advocate for the petitioner.

CORAM : R.G.KETKAR,J.

DATE : 07/07/2015

PC:

1. Heard Mr. Sanjay Patil, learned counsel for the petitioner.
2. By this Petition under Article 227 of the Constitution of India, original defendant no.7 has challenged the Judgment and order dated 8.1.2015 passed by the learned 4th Jt. Civil Judge, Jr Dn, Vashi below Exhibit-64 in Regular Civil Suit No.385 of 2014. By that order, the learned trial Judge rejected the application filed by the defendant no.7 under section 9-A of C.P.C. for framing preliminary issue, namely, whether Civil Court has jurisdiction to try, entertain and dispose of the suit?.
3. In paragraph 6 of the impugned order, the learned trial Judge recorded that application for temporary injunction at Exh.5 was decided by the Court on 15.2.2011. Application at Exh.64 was filed by defendant no.7 under section 9-A of C.P.C. on 21.11.2013. The learned trial Judge, therefore, held that at the time when application for interim relief was pending, defendant

no.7 did not file application under section 9-A. The learned trial Judge accordingly held that application is not maintainable.

4. Mr. Patil, after arguing petition for quite some, submits that the petitioner will withdraw application Exh.9-A and take out appropriate application for deciding whether Civil Court has jurisdiction to entertain and try the suit.

5. On the motion made by Mr Patil, Application Exhibit 64 is permitted to be withdrawn and consequently this Petition is also allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the proposed application. All the contentions in that regard are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)