

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

WRIT PETITION NO.2629 OF 2015

Shri. Prakash Baburao Yadav (Ranjane) .. Petitioner

Versus

Shri. Puroshattam Baburao Yadav and others .. Respondents

Mr. V. R. Gaikwad, for the Petitioner.

Mr. N. P. Deshpande, for the Respondent No.5.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. The order dated 21.11.2014 passed by the Learned Civil Judge, Junior Division, Wai, rejecting the Application Exh.40 for withdrawal of the suit and to file a fresh suit on the same cause of action is taken exception to by way of the above Petition. The suit in question being Regular Civil Suit No.173 of 2012 has been filed questioning the compromise which has taken place in Regular Civil Suit No.153 of 2010. In the instant suit, the Sale Deed executed in favour of the Defendant No.5 is also questioned and the parties have been arraigned accordingly. The instant Application Exh.40 has been filed on the ground that the properties and the parties in the said Regular Civil Suit No.153 of 2010 have not been arraigned in the present suit and therefore it is likely that the said suit would be dismissed on account of formal defect. The Petitioner/Plaintiff has therefore filed the instant application for

withdrawal of the suit and for filing a fresh suit on the same cause of action. The Trial Court has rejected the application on the ground that the Plaintiff was very well aware of the decree passed by compromise in the said Regular Civil Suit No.153 of 2010 and has accordingly filed the instant suit questioning the said compromise by arraigning the parties. The Trial Court was of the view that the Plaintiff cannot be allowed to file a fresh suit on the same cause of action. The Trial Court has also observed that the Plaintiff can apply for amendment of the plaint. In my view, having regard to the reasons mentioned in the impugned order as also having regard to the fact that the Plaintiff was very well aware of the decree passed in Regular Civil Suit No.153 of 2010, the Plaintiff cannot be permitted to withdraw the instant suit and file a fresh suit on the same cause of action. If the Plaintiff is of the view that some more parties and properties are required to be incorporated in the present suit, then it is open for the Plaintiff to file an application for amendment of the plaint. If any such application is filed by the Plaintiff, needless to state that the same would be considered by the concerned Court, on its own merits and in accordance with law uninfluenced by the instant rejection. With the aforesaid observations, the Writ Petition is dismissed.

[R.M. SAVANT, J]

“Certified to be true and correct copy of the original signed order.”