

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

CIVIL REVISION APPLICATION NO.66 OF 2015

Sou. Mumtaz Begum Mohmmmed Umar Patel

and another

.. Applicants

Versus

Sou. Aminabi Abdul Latif Patel and others

.. Respondents

Mr. Balkrishna D. Joshi, for Applicants.

Mr. G. S. Godbole i/by Sumit Kothari, for Respondents No.15, 16 & 17.

**Mr. Nilesh Masurkar with Pravin B. Gole, for Respondents No.1, 4, 5,
7, 8 & 9.**

Mr. Sachin Punde, for Respondent No.2.

Mr. V. S. Talkute, for Respondent No.6.

WITH

CIVIL REVISION APPLICATION (STAMP) NO.24787 OF 2014

Shri. Abdul Rehman A. Lateef Patel

...Applicant

Versus

Rizwan Sayyed Abdul Gafur and others

...Respondents

Mr. V. S. Talkute, for the Applicant.

Mr. G. S. Godbole i/by Sumit S. Kothari, for Respondents No.1 to 3.

Mr. Balkrishna D. Joshi, for Respondents No.4 & 5.

Mr. Sachin Punde, for Respondent No.11.

**Mr. Nilesh Masurkar with Pravin B. Gole, for Respondents No.10 & 20
to 24.**

CORAM : R.M. SAVANT, J.

DATE : 11th FEBRUARY, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 03.07.2014 passed by the Learned Civil Judge, Senior Division, Panvel, by which order the application (pursis) Exh.99 for withdrawal of the suit in terms of the said pursis that was filed by the Plaintiffs came to be rejected.

2. The above Civil Revision Applications have been filed by the Plaintiffs and the Defendant No.6 to the suit in question being Special Civil Suit No.119 of 2008. The Respondents No.4 and 5 herein are the original Plaintiffs in the said suit. The said suit has been filed for partition and separate possession of the Plaintiffs share. It is during the pendency of the suit that the instant pursis Exh.99 for withdrawal of the suit has been filed by the Plaintiffs. Reading of the said pursis Exh.99 discloses that the withdrawal of the said suit is sought on the ground that the Plaintiffs have no interest in prosecuting the suit on account of the death of their brother. Hence, the withdrawal of the suit is an unconditional withdrawal. To the said pursis, a reply was given by the Respondents No.1 to 4 and 9. The Defendants No.1, 4 and 9 in their reply stated that they have no objection to the withdrawal of the suit. The Defendant No.10 i.e. CIDCO is a formal party in the context of the withdrawal of the suit. In so far as the

Defendants No.11 to 14 are concerned, they are the heirs and legal representatives of the Defendant No.3 who died during the pendency of the suit and the said heirs were brought on record. The objection to the withdrawal was taken by Defendants No.15, 16 and 17. The said Defendants are the assignees from one Ayshabee. She was also from the same family and was the sister of the original Plaintiffs. The application for impleadment filed by the said Defendants No.15, 16 and 17 was allowed by the Trial Court which was confirmed by a Learned Single Judge of this Court by order dated 30th July, 2013 passed in Writ Petition No.4580 of 2013. The Trial Court considered the objection of the Defendants No.15 to 17 and has rejected the pursis Exh.99 by the impugned order on the ground that the properties are not partitioned and therefore, the share of the Defendants are not defined. It is the said order dated 03.07.2014 which is taken exception to by way of the above Petition.

3. At this stage, it is required to be noted that there is another suit pending i.e. Special Civil Suit No.109 of 1999 which was filed by the said Ayshabee Mohammed Rafique Patel. The said suit is also filed for partition and possession. It seems that in the said suit the Defendants No.15 to 17 in the instant suit have filed an application for impleadment founded on the fact that they are assignees from the said Ayshabee Patel.

It seems that the said application is pending adjudication. Be that as it may, since the Plaintiffs are seeking unconditional withdrawal of the suit, the Trial Court has erred in rejecting the same. The provisions of Order 23, Rule 1 permit such an unconditional withdrawal by the Plaintiffs. If the Defendants No.15, 16 and 17 claim to have any rights from the said Ayashabee, they would undoubtedly be entitled to assert their rights by filing independent proceedings and the order permitting the withdrawal of the instant suit cannot come in their way. It is also required to be noted that since the other suit being Special Civil Suit No.109 of 1999 is pending and since the application filed by the Defendants No.15 to 17 i.e. Respondents No.1 to 3 herein is pending, it would also be open for the said Respondents to agitate their grievance in the said pending suit. This Court does not express any opinion as regards the merits of the case of the Defendants No.15 to 17. However, in the instant case since the Trial Court has failed to exercise jurisdiction in the matter of permitting withdrawal, the exercise of the revisionary jurisdiction of this Court is warranted. In that view of the matter, the impugned order dated 3rd July, 2014 is required to be quashed and set aside and is accordingly, quashed and set aside. The application Exh.99 would accordingly stand allowed. The Plaintiffs would consequently be entitled to withdraw the suit unconditionally. The above Civil Revision Applications are allowed to the

aforesaid extent. The Plaintiffs may produce a copy of this order before the Trial Court on 17th February, 2015. The Trial Court to pass an order permitting the withdrawal of the suit in the light of the instant order. The Trial Court may direct the refund of Court Fees as per rules.

[R.M. SAVANT, J]