

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8807 OF 2015

Sundarabai Purbha Kamate

..PETITIONER

VERSUS

Manoj Prataprao Kamate and Others

..RESPONDENTS

....

Mr. P.V. Mandlik, Senior Advocate i/b Mr. A.S. Gandhi, Advocate for petitioner.

Mr. A.A. Mukhedkar, Advocate for Respondent Nos.3 and 4.

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CORAM : T.V. NALAWADE, J.

DATED : 21st OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Junior Division, Mukhed on Exhibit 1 in Regular Civil Suit No. 32 of 2009. Heard both the sides.

2. The suit is filed for relief of possession against four defendants. During pendency of the suit, plaintiff compromised the matter with Defendant No.1 and then he decided to withdraw the suit against remaining defendants. During pendency of the suit, Defendant No.1 allegedly handed over the possession to plaintiff. Thus on one hand, plaintiff had contended that possession was with the defendants who

were real brothers and mother. Now plaintiff wants to withdraw the suit against defendant who is not compromising in the suit. The defendants had filed written statement that suit property belongs to joint Hindu family of plaintiff and defendants and they are entitled to get the share.

3. In view of change in circumstances, Defendant No.3 and 4 have filed counter claim as they want to challenge the sale deed allegedly executed by Defendant No.1 in favour of the plaintiff and possession is also shown to be given to plaintiff. It is their case that as the property belongs to joint Hindu family, they are entitled to joint possession alongwith plaintiff even if any transaction is made by Defendant No.1 in favour of plaintiff. As there is counter claim which has arisen due to change in circumstances during the pendency of the suit, the counter claim can go on. If plaintiff does not want any relief against the defendants, she is at liberty to withdraw the suit but the counter claim can be allowed to be prosecuted by the defendants.

4. In view of the circumstances, the Trial Court has committed error in rejecting the application which was filed for permission to withdraw the suit. The withdrawal will be treated as unconditional withdrawal against Defendant Nos. 2 to 4.

5. With these observations, the petition is allowed. The order made by the Trial Court of permission to withdraw of suit against Defendant Nos.2 to 4 unconditionally is set aside and that application is allowed.

(T.V. NALAWADE, J.)

SSD