

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7154 OF 2012

KISHANCHAND DAMANDAS CHETWANI
AND OTHERS

PETITIONERS

VERSUS

AMAR BHAGWANDAS KAMDAR AND OTHERS

RESPONDENTS

Mr.V.D.Gunale, Advocate for the petitioners.

Mr.R.P.Adgaonkar, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/04/2016

PER COURT :

1. This Court (Coram : V.L.Achliya, J.) observed by its order dated 20/04/2016 as under :-

“The learned counsel for the petitioner seeks adjournment. The petition is filed in the year 2012. There is no interim relief operating in the matter. The basic grievance raised in the petition is against the order passed by learned Judge of the Trial Court to grant leave to withdraw the suit with liberty to file fresh suit. It appears from the record that during the pendency of the suit defendant secured the possession of the suit land in execution of the decree. Plaintiffs had filed suit simplicitor seeking prohibitory injunction to protect the possession. In view of the possession was obtained by defendant in execution of the decree by orders of the Court, plaintiffs have withdrawn the suit

with liberty to file fresh suit. In the circumstances, learned counsel for both sides are expected to make statement as to whether any fresh suit has been filed or not and further seek instructions as to whether the petitioner is interested to prosecute the petition. In order to enable the learned counsel for the petitioner to obtain instructions, adjourned to 26th April, 2016.”

2. Mr.Adgaonkar, learned Advocate for respondent No.4 submits on instructions that despite the leave granted by the Trial Court to withdraw RCS No.461/2006 and file a fresh suit owing to the subsequent developments and causes of action, the original plaintiffs have not preferred a fresh suit till today.

3. Considering the observations of this Court in its order dated 20/04/2016, the petitioners were expected to make a statement on 26/04/2016. An adjournment was sought by the petitioners on 26/04/2016 and the matter was specifically kept today for making a statement as to whether the petitioners have any surviving grievance about the impugned order.

4. Mr.Gunale submits that as the original plaintiff has not filed a fresh suit pursuant to the impugned order dated 25/04/2012, this

petition is rendered infructuous at this stage. He, however, submits that the petitioners had moved an application before the Trial Court for withdrawal of the amount deposited and the same has been rejected due to the pendency of this petition as well as due to the leave granted to the plaintiff to file a fresh suit. Since this petition can be disposed of as being infructuous at this stage, liberty may be granted to the petitioners to move an application for withdrawal of the said amount.

5. Considering the observations of this Court in its order dated 20/04/2016 and in the light of the above, I do not find that any cause of action survives. In the light of the statement made as above on instructions on behalf of the petitioners and respondent No.4, this petition is disposed of, as being infructuous.

6. Leave is granted to the petitioners to apply for withdrawal of amount before the Trial Court, which shall hear the litigating sides while deciding the request for withdrawal.

(RAVINDRA V. GHUGE, J.)