

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

CIVIL REVISION APPLICATION NO. 123 OF 2016

Ghanshyam Gorakhnath Karvande ..APPLICANT

VERSUS

Sandu Namdeo Karvande and Another ..RESPONDENTS

....
Mr. C.K. Shinde, Advocate for applicant.

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**CORAM : SUNIL P. DESHMUKH, J.
DATED : 29th AUGUST, 2016**

ORDER :

1. Heard learned counsel for applicant.
2. Applicant is before this Court challenging order dated 23rd March, 2016 passed on Exhibit 1 by Jt. Civil Judge, Junior Division, Aurangabad whereunder request of applicant, to let him withdraw Regular Civil Suit No. 42 of 2016 with liberty to file fresh suit, which is a suit filed for partition, possession and injunction in respect of Gat No. 19 admeasuring 36 Are and Gat No. 87 admeasuring 11 Are against defendant, is rejected.

3. It is the case of applicant that while the suit has been filed for partition, possession and injunction in respect of Gat No. 19 admeasuring 36 Are and Gat No. 87 admeasuring 11 Are, it transpired that defendant Sandu Karvande has transferred Gat No. 19 admeasuring 36 Are by way of a registered sale deed dated 08th January, 2016 to one Hukumchand Gavli. Since that sale deed is not challenged, it would cause damage to the very purpose of the suit. Under the circumstances, permission to withdraw the suit with liberty to file a fresh suit ought to be granted.

4. Defendants No. 1 and 2 i.e. respondents No.1 and 2 have opposed the application referring to various aspects contending that the defendants are poor. It is further submitted that in any case the plaintiff has remedy to amend the plaint and seek leave in that regard. Under the circumstances, the application had been resisted and its rejection has been sought with costs.

5. Perusal of the impugned judgment in present civil revision application shows that the Court has considered it appropriate that the difficulty put forth by plaintiff for withdrawal of suit with liberty to file fresh suit can be taken care of by allowing the plaintiff to amend the suit.

6. In the judgment in the case of ***Rajaram Jairam Raut Vs. Baliram Laxman Raut*** reported in ***2006 (2) Mh.L.J. 693 2006 : 2006 (Supp.1) Bom.C.R. 718*** wherein it appears to have been considered that the difficulties faced by the plaintiff can be taken care of by appropriate amendment application.

7. This does not appear to be such a case that grave prejudice is caused to applicant and though the application is rejected by order on Exhibit 1, it is open for plaintiff to cause amendment in respect of the proceedings lodged.

8. Civil Revision Application accordingly stands disposed of.

(**SUNIL P. DESHMUKH, J.**)

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