

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10280 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Devendra Avhad i/b M/s.Thodur Law Associates
for the petitioner

CORAM : K. K. TATED, J.

DATE : JULY 28, 2016

P.C.:

1 Heard the learned counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff is challenging the order dated 16.7.2014 passed by Joint Civil Judge, Junior Division, Pune below Exhibit-95 in Regular Civil Suit No. 1252 of 2008 and the order dated 22.1.2013 passed by 3rd Civil Judge, Junior Division, Pune below Exhibit-85 in Regular Civil Suit No. 1252 of 2008 rejecting plaintiff's application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 for allowing them to withdraw the Suit with liberty to file afresh for same cause of action.

3 In the present proceeding, initially the plaintiff filed Regular Civil Suit No. 1252 of 2008

for partition and separate possession of joint HUF property. It was the case of the plaintiff that recently they traced out some record to show that some of the parties of the Suit and properties remained to be included. Thereafter plaintiff filed application below Exhibit-85 for allowing to withdraw the said Suit with liberty to file afresh for same cause of action on the basis of additional documents and adding other properties. That application was rejected by the Trial Court by order dated 22.1.2013. Thereafter, petitioner preferred Review Application. That also stand rejected by order dated 16.7.2014. Hence, the present Writ Petition.

4 The learned counsel for the petitioner submits that Trial Court ought to have allowed the petitioner's application to withdraw the Suit with liberty to file fresh Suit for same cause of action including other grounds. In the Partition Suit they have to include all the properties belonging to HUF. Hence, the plaintiff filed application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908. These facts were not considered by both the courts below. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Writ Petition with liberty to the petitioner to file fresh suit for same cause of action with additional documents.

5 I have heard the learned counsel for the

petitioner at length. It is to be noted that both the courts at the time of rejecting plaintiff's application relied on the judgment in the matter of ***Promila Bakshi vs. Ashok Bhatia***, AIR 2007 HP 14 in which the High Court specifically held that liberty cannot be granted to withdraw the Suit on the ground that plaintiff traced out some new facts.

6 Considering the reasons disclosed in both the orders, I do not find any substance in the present Writ Petition. Hence, same stands rejected.

JUDGE