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

CIVIL REVISION APPLICATION NO.76 OF 2017

Surekha wd/o Balasaheb Jadhav,
Age: 47 years, Occu: Household,
R/o Walgud, Tq. & Dist. Osmanabad
presently residing at Rui, Tq. Barshi,
Dist. Solapur

..APPLICANT

VERSUS

1. Kesharbai wd/o Haridas Jadhav,
Age: 74 years, Occu: Household,
R/o Walgud, Tq. & Dist. Osmanabad
2. Haridas s/o Rajaram Jadhav,
died
3. Gurudev @ Goroba s/o Haridas Jadhav,
Age: 49 years, Occu: Agril.,
R/o Walgud, Tq. & Dist. Osmanabad
4. Tanaji s/o Haridas Jadhav,
Age: 45 years, Occu: Agril.,
R/o as above
5. Vilasbai w/o Nagnath Pawar,
Age: Major, Occu: Household,
R/o Ratanjan, Tq. Barshi,
Dist. Solapur
6. Chhaya Hanumant Jagtap,
Age: Major, Occu: Household,
R/o Devlali (Dhoki),
Tq. & Dist. Osmanabad
7. Kausalya Lahu Garad,
Age: Major, Occu: Household,
R/o Pimpri, Tq. & Dist. Osmanabad
presently residing at Walgud,
Tq. & Dist. Osmanabad

..RESPONDENTS

Mr J. R. Patil, Advocate for applicant;
Mr S. A. Wakure, Advocate for respondent Nos. 1 & 3 to 7

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CORAM : N.W. SAMBRE, J.**DATE : 27th June, 2017****ORAL ORDER**

The applicant-plaintiff moved application Exh.62 in Regular Civil Suit No. 399 of 2012, under clause B of Sub-rule 3 of Rule 1 of Order XXIII of the Code of Civil Procedure ("CPC") on the ground that there is sufficient ground for withdrawing the claim with liberty to file the said claim afresh.

2. The aforesaid application was objected on the ground that the suit has reached at an advanced stage as recording of evidence is almost over.

3. Considering the aforesaid objections, the learned Trial Court rejected application Exh.62. Thus, the present revision.

4. Having heard for sometime, it is required to be noted that applicant-plaintiff through the written statement was made to understand that property Gat No.152 was self acquired property and as such, cannot be subjected to partition. However, later on the plaintiff disputed that the said property can be included in common hotch potch and as such, application for withdrawal of suit with liberty to file a suit afresh came to be rejected.

5. In my opinion, the order impugned is not sustainable for the reason that under Order XXIII, Rule 1, Sub-rule 3(b) of CPC, what is contemplated is, a plaintiff is permitted to withdraw a suit, provided he established

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sufficient ground with a liberty to file afresh one. The factual matrix as is narrated herein above demonstrates that there was a sufficient ground for the plaintiff to believe that said property Gat No.152 cannot be subject matter of partition and it is only after the evidence was recorded, he could make up his mind that the same can also be subjected to partition.

6. In view of above, though strongly objected by learned Counsel appearing on behalf of the respondents on the ground that suit was twice amended and is pending since 2010, I am inclined to allow the present application in terms of prayer clause (C) and accordingly stands allowed, subject to payment of total costs of Rs.7,500/- by the present applicant to the non-applicants, including Rs.5,000/- which is already deposited.

7. The balance amount of Rs.2,500/- be deposited in the Trial Court within a period of two weeks from today.

The respondents are at liberty to withdraw the amount of Rs.5,000/- deposited before this Court towards costs.

With above observations, civil revision application stands disposed of.

(N.W. SAMBRE, J.)

amj