

(1)

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

CIVIL REVISION APPLICATION NO.235 OF 2016

Ankush s/o Dinkar Chavan,
Age: 30 years, Occu: Agri.,
R/o Rajpimpri, Tal. Georai,
District Beed

..APPLICANT

VERSUS

1. Sominath s/o Kalu Chavan,ad
Age: 75 years, Occu: Agri.,
R/o Rajpimpri, Hivra Tanda,
Tal. Georai, District Beed
2. Parubai w/o Sominath Chavan,
Age: 65 years, Occu: Household,
R/o As above
3. Dinkar s/o Sominath Chavan,
Age: 50 years, Occu: Agri.,
R/o as above
4. Subhash s/o Sominath Chavan,
Age: 40 years, Occu: Agri.,
R/o As above
5. Geetabai w/o Haribhau Pawar,
Age: 55 years, Occu: Household,
R/o as above
6. Hausabai w/o Vitthal Rathod,
Age: 45 years, Occu: Household,
R/o Thakarwadi Tanda
Tahat Rakshasbhuvan,
Tal. Georai, Dist. Beed
7. Kausabai w/o Gorakh Rathod,
Age: 35 years, Occu: Household,
R/o Paulachiwadi Tanda,
Tal. Georai, District Beed
8. Khira s/o Kalu Chavan,
Age: 70 years, Occu: Agri.,
R/o Raj Pimpri, Tal. Georai,
District Beed

(2)

9. Ram s/o Khira Chavan,
Age: 40 years, Occu: Agri.,
R/o as above, at present
R/o Sanjay Nagar, Georai,
Tal. Georai, District Beed
 10. Santosh s/o Khira Chavan,
Age: 30 years, Occu: Agri.,
R/o as above
 11. Anusayabai w/o Baburao Rathod,
Age: 35 years, Occu: Household,
R/o Opp. Measurement Office,
Georai, Tal. Georai, Dist. Beed
 12. Sau. Latabai w/o Baban Rathod,
Age: 30 years, Occu: Household,
R/o As above
 13. Sau. Sunita w/o Sunil Rathod,
Age: 25 years, Occu: Household,
R/o Takadgaon, Tal. Georai,
District Beed
- ..RESPONDENTS

Mr S. S. Thombre, Advocate for applicant;
Mr H. K. Munde, Advocate for respondent Nos. 1 to 7;
Mr V. P. Savant, Advocate for respondent Nos. 8 to 13

CORAM : N.W. SAMBRE, J.

DATE : 27th June, 2017

ORAL ORDER

The present applicant-original plaintiff in Regular Civil Suit No.823 of 2014 has questioned the order dated 17th December, 2016, passed by 3rd Joint Civil Judge Junior Division, Georai, below Exhs.47 and 49 and has further sought a positive order that he is permitted to withdraw the suit.

(3)

2. The facts necessary for deciding the present application are as under:-

The present applicant-plaintiff instituted aforesaid civil suit for partition and separate possession of the suit property. In the said suit applicant-plaintiff moved application on 27th October, 2016 stating that the plaintiff and defendants to the said suit have settled the claim. On 12th November, 2016 another application Exh.49 came to be moved seeking simplicitor withdrawal of the suit on the ground that the plaintiff is adequately compensated. Below that the Trial Court has passed impugned order not accepting the prayer made under Order XXIII, CPC for withdrawal of the suit.

3. Before moving application Exh.49 dated 12th November, 2016, respondent Nos. 8 to 13 moved an application under Order I, Sub-rule 2 of Rule 10 of CPC stating that in the suit for partition and separate possession, they have equal right and as such, they be substituted as plaintiffs. Said application is dated 3rd November, 2016 which came to be decided by the impugned order. Thus, the present revision application.

4. One more important fact of which a judicial note is required to be taken is, before institution of Regular Civil Suit No.823 of 2014 by the applicant, his father Dinkar excluding applicant-plaintiff instituted Regular Civil Suit No. 836 of 2013 for partition and separate possession which was again compromised between the parties as is apparent from the documents to that effect placed on record.

(4)

5. In the aforesaid backdrop, Mr Thombre, learned Counsel appearing on behalf of the applicant while inviting attention of this Court to the provisions of Order XXIII and Order 1, Rule 10, Sub-rule (2) of CPC would urge that the applicant-plaintiff is a *dominus litis*. Whether to add a person a plaintiff or defendant is purely within his control and if he is committing any mistake to that effect, the plaintiff will expose to such illegality for which he shall suffer the consequences. However, according to him, by virtue of Court's order, the applicant-plaintiff cannot be mandated to add respondent Nos. 8 to 13 as party plaintiffs to the suit. In addition, learned Counsel would urge that whether to pursue a cause of action is purely within the ambit and control of the applicant and it is not for the Court to direct the applicant to pursue the same by rejecting the prayer for withdrawal of the suit. According to him, respondent Nos. 8 to 13 have every right independent of the suit filed by the applicant to take out a cause for the same purpose and to pursue the matter independently, but for the suit in question.

6. Mr Munde, learned Counsel appearing on behalf of respondent Nos. 1 to 7 supported the claim made by Mr Thombre. According to him, respondent Nos. 8 to 13 have no right to pursue the suit in question.

7. If the claim put forth in the backdrop of the impugned order is appreciated, what is required to be noted is, the first suit i.e. of 2013 being Regular Civil Suit No.836 of 2013 was compromised between the parties in

(5)

relation to the same properties, which are subject matter of Regular Civil Suit No. 823 of 2014 at the behest of applicant. The applicant-plaintiff and respondents also initially tried to settle the said suit, however, having noticed that their object will not be achieved, moved an application under Order XXIII of the CPC for withdrawal of the suit simplicitor. The wordings in the purshis speaks voluminous as present applicant-plaintiff claimed to have been adequately compensated either by respondents or subsequent purchasers.

8. In the aforesaid backdrop, respondent Nos. 8 to 13 have come out with a case that they have right in the suit property and are seeking partition. Such plea is raised by the respondent Nos. 8 to 13 way back in 2016, particularly on 3rd November, 2016 which remained pending. Having realised the danger of being suffering a suit at the behest of respondent Nos. 8 to 13, it appears that the applicant acting hand in glove with respondent Nos. 1 to 7 has preferred an application under Order XXIII, which is rightly considered and rejected by the learned Trial Court.

9. Apart from above, it is required to be noted that in a suit for partition and separate possession, all the parties who are claiming share in the property have same status of adjudicating their claim/share in the property. The same appears to be the analogy which is applicable to respondent Nos. 8 to 13 as they are trying to establish their case seeking share in ancestral property. It is too premature to state at this stage that respondent Nos. 8 to 13 have no share in the property as the same has to

(6)

be established by them independently and it is for this cause, they have moved application for including them as party plaintiffs to the suit. The said application, for the cogent reasons and in the backdrop of above observations has been rightly allowed. No interference is warranted, particularly when no failure of exercise of jurisdiction could be noticed.

10. At this stage, the learned Counsel appearing on behalf of the applicant submits that the hearing of the suit of which the applicant is seeking withdrawal be expedited, to which consensus has been given by the learned Counsel appearing on behalf of the respondents. Having noticed that the parties are litigating for their shares since 2013, may be in a compromised suit, the hearing of the suit is expedited.

With above observations and directions civil revision application stands disposed of .

(N.W. SAMBRE, J.)

amj