

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4652 OF 2014

Shri Lahu Krishna Mhatre
& Others

.. Petitioners.

v/s.

Sou. Nirmala P. Patil
& Others

.. Respondents.

Mr. Sachin Dhakephalkar, for the Petitioner.
Mr. Sanjay S. Patil, for Respondent No.1.
Mr. Subhash G. Patil, for Respondent No.8.

CORAM: M.S.SANKLECHA, J.
DATE : 7th AUGUST, 2017.

P.C:-

By consent of the parties, Petition is being disposed of finally,
at the stage of admission.

2 This Petition under Article 227 of the Constitution of India,
challenges the order dated 21st January, 2014 passed by the Civil Judge,
Senior Division, Link Court, Bhiwandi.

3 The impugned order rejects the application of the Defendant
i.e. Petitioner herein, that the suit be disposed/ dismissed on the ground
that the Plaintiff had relinquished her right in the suit property.

4 The impugned order holds that the application filed under
Order 23 Rule 3A of the Code of Civil Procedure, 1908, would have no

application in the present facts as the parties have not consented to any compromise. However, while rejecting the application, the impugned order holds that the Plaintiff has not for relinquished her rights in the suit property as she has not received any consideration for the same.

5 Mr. Dhakephalkar, learned Counsel appearing for the Petitioner very fairly submits that the impugned order rejecting the application, need not be disturbed. The Petitioner be allowed to withdraw the Petition with liberty to lead evidence during the trial to establish that the Respondent had in fact, relinquished her title to the suit property and the Trial Court will render a finding on the same uninfluenced by the finding recorded in the impugned order.

6 Mr. Patil, learned Counsel appearing for the Respondent has no objection to the aforesaid liberty being granted.

7 Thus, the Petition is disposed of as withdrawn with the aforesaid liberty i.e. during the course of the Trial, the Petitioner would be at liberty to establish that the Respondent has, in fact, relinquished her claim/ title to the suit property. Needless to state the Trial Court will consider the same on its own merits, uninfluenced by the impugned order on the above issue.

8 In the above view, **Writ Petition is disposed of as withdrawn.** No order as to costs.

(M.S.SANKLECHA,J.)