

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7830 OF 2016
WITH
WRIT PETITION NO.8965 OF 2016
WITH
WRIT PETITION NO.8968 OF 2016**

Varsha Bharat Shah & Ors.	]	Petitioners
Vs.		
Prakash Mithubhai Damani & Ors.	]	Respondents
.....		
Mr. A.N. Nashikwala, for petitioner.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 13TH JUNE, 2018.

P.C.

Heard Mr. Nashikwala, learned Counsel for the petitioners. At the request of Mr. Nashikwala, Writ Petition No.8968 of 2016 is taken up for admission along with these Petitions.

2. All these Petitions are directed against the orders dated 11th May, 2016 passed by the learned Judge Court Room No.20 in the Court of Small Causes at Mumbai in the applications taken out by the plaintiffs No.5 to 7 in the pending suits. By the impugned orders, the learned trial Judge allowed these applications filed by the plaintiffs No.5 to 7 and permitted them to withdraw themselves from the suit proceedings. Plaintiffs No.1 to 4 and 8 to 12 are directed to delete names of plaintiffs No.5 to 7 from the cause title of the suit.

3. In support of these Petitions, Mr. Nashikwala invited my attention

to prayer clause (a) in the applications and submitted that as plaintiffs No.5 to 7 have assigned their 50% un-divided share, right, title and interest in the suit property in favour of defendants, they do not desire to proceed against the defendants. However, by the impugned orders the learned trial Judge has permitted withdrawal of plaintiffs No.5 to 7 from the suits. He, therefore, submitted that it may be clarified that the plaintiffs No. 5 to 7 have withdrawn their suits against the defendants.

4. I have considered submissions advanced by Mr. Nashikwala. I have perused the material on record. Prayer clause (a) of the applications reads thus;

“(a)This Honourable Court to be pleased to allow Plaintiff Nos. 5, 6 & 7 to withdraw the present suit filed against the defendants;”

A perusal of prayer clause (a) clearly shows that plaintiffs No.5 to 7 have prayed for withdrawal of the suit against the defendants and not for their withdrawal from the suit. As plaintiffs No.1 to 4 and 8 to 12 are not consenting for withdrawal of the suit in entirety, I do not find that the learned trial Judge has committed any error in allowing the applications. Operative part of the impugned order reads thus;

- “1. The application is allowed.
2. The plaintiffs no.5 to 7 are allowed to withdraw themselves from this suit proceeding.
3. The plaintiffs no.1 to 4 & 8 to 12 are directed to delete the names of plaintiffs no.5 to 7 from the cause title of the suit.
4. No order as to cost for this application”.

5. A perusal of clauses 2 and 3 clearly shows that the learned trial Judge has allowed plaintiffs No. 5 to 7 to withdraw themselves from the suit proceedings and has further directed plaintiffs No.1 to 4 and plaintiffs No. 8 to 12 to delete names of plaintiffs No. 5 to 7 from the cause title of the suits.

6. In view thereof and for the reasons recorded in the impugned orders, no case is made out for interfering with the impugned orders. Hence, Petitions fail and the same are dismissed.

[R.G. KETKAR, J.]