

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2540 OF 2018

Ravindra Bapurao Bhujbal	... Petitioner
V/s.	
Aruna Manik Adagale and Ors.	... Respondents

Mr. Pramod J. Pawar for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH APRIL, 2018.

P.C. :

1. Heard Mr. Pawar, learned counsel for the Petitioner.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 9th June 2017, passed by the 2nd Joint Civil Judge, Junior Division, Ghodnadi (Shirur), below the application at "Exhibit-36" filed in Regular Civil Suit No.301 of 2016.
3. The application at "Exhibit-36" was filed by the present Petitioner, who is Defendant No.4 before the Trial Court, under Order 7 Rule 11 and Order 23 Rule 1 of CPC, raising the contention that, Respondent No.1-Plaintiff had earlier also filed Regular Civil Suit No.21 of 2013 for the relief of declaration and injunction, which was withdrawn unconditionally. On the pursis filed by Respondent No.1 in the said Suit,

the order was passed by the Trial Court on 6th December 2016, granting her permission to withdraw the Suit and it was specifically observed in the said order that, Respondent No.1 will be precluded from instituting any fresh Suit in respect of same subject matter or part of the claim.

4. It is urged that, now the Respondents have filed this fresh Suit in respect of the same subject matter and, therefore, the Suit was not tenable and the plaint should have been rejected by the Trial Court.

5. However, as observed by the Trial Court, this Suit is not simplicitor for declaration and injunction, but it is also for partition. It is pertinent to note that, as per the pursis filed in the earlier Suit, bearing Regular Civil Suit No.21 of 2013, Respondent No.1 has withdrawn the Suit on the count that, there were some technical defects. Therefore, it was not withdrawn on the count that, the grievance of Respondent No.1 no more remains or her claim was satisfied, but, it is clear that it was withdrawn to remove the technical defects. The technical defect appears to be that, instead of filing the Suit simplicitor for declaration and injunction, it should have been for partition also. Therefore, now the Respondents have filed this fresh Suit including the prayer of partition. It is not only a separate Suit having a different cause of action, but also for additional prayer of partition. Hence, the earlier order passed by the Trial Court in Regular Civil Suit No.21 of 2013 will not come in the way.

6. The Trial Court has, thus, rightly held that the reliefs claimed in both the Suits are different. Hence, the impugned order passed by the Trial Court does not call for any interference.

7. Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]