

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION(st)NO. 22112 OF 2018

Vimalchand G. Jain and Others	..Applicants
Vs.	
Sundari G. Pillai	..Respondent

Mr. Vimalchand G. Jain, the Petitioner in-person.

Mr. Ravi Asabe i/b Ergo Juris, for the Respondent.

CORAM :- B.P.COLABAWALLA, J.
DATE :- DECEMBER 19, 2018.

P. C.:

Applicant No.1 is appearing in-person and who is the power of attorney holder of all other Applicants. What is challenged in this Civil Revision Application is an order passed on a preliminary issue framed below Exhibit-13 in Special civil Suit No. 24 of 2016. The preliminary issue that was framed was whether the Suit was maintainable in the present form. This preliminary issue was decided by the Trial Court under Section 9A of the Code of Civil Procedure, 1908 and the Trial Court after giving a chance to lead evidence to both parties, came to the conclusion that the suit was maintainable. It is this order that is challenged by filing the present Civil Revision Application.

2 I must mention that Section 9A has been repealed by the Maharashtra Act No. LXI of 2018. Section 3 (2) of the Repeal Act clearly stipulates that in all the cases, where a preliminary issue framed under Section 9A has been decided, holding that the Court has jurisdiction to entertain the suit, and a challenge to such decision is pending before a revisional court, on the date of commencement of the Amendment Act, such revisional proceedings shall stand abated. Proviso to Section 3(2) also stipulates that where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the grounds of objection in the memorandum of appeal as if it had been included in such memorandum.

3 In view of the clear provisions of Section 3(2) of the Maharashtra Act No. LXI of 2018, this Civil Revision Application stands abated and is disposed of as such.

4 It is made clear that if the Applicants herein suffer a decree, they will be entitled to challenge the order impugned in this Civil Revision Application, when they challenge the final decree.

(B. P. COLABAWALLA, J.)