

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

CIVIL REVISION APPLICATION NO.121 OF 2019

Bhima s/o. Shama Bavane,
Age : 65 years, Occ. Agri.,
r/o. A/p. Waghira,
Tq. Patoda, Dist. Beed
and others

..Applicants

Vs.

Shivaji s/o. Rangnath Bavane,
Age : 59 years, Occ. Agri.,
r/o. A/p. Waghira,
Tq. Patoda, Dist. Beed
and other

..Respondents

Mr.Chaitanya Dharurkar, Advocate for applicants

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 26, 2019
PRONOUNCED ON : SEPTEMBER 09, 2019**

ORDER :

Heard.

2. The challenge in this Revision Application is to the order dated 15.03.2019 passed by learned 2nd Joint Civil Judge, Junior Division, Beed in suit, being

Regular Civil Suit No.91 of 2017. By the impugned order, the application (Exh.29) preferred by petitioners herein (defendants) for rejection of plaint, came to be rejected.

3. The respondents herein are original plaintiffs in the suit (R.C.S. No.91 of 2017). They had filed a suit, being Regular Civil Suit No.234 of 2015, before the Court of learned Civil Judge, Junior Division, Patoda. The said suit was for the relief of declaration and perpetual injunction. The respondents /plaintiffs had moved a pursis (Exh.25) seeking withdrawal of said suit. Learned Civil Judge allowed to withdraw the said suit.

4. Mr.Dharurkar, learned Counsel for the petitioners, would submit that the suit was withdrawn unconditionally. No permission of the Court was obtained to file a fresh suit on the same cause of action. The subsequent suit, R.C.S. No.91 of 2017, is, therefore, not maintainable in view of Order

XXIII, Rule 1(4) of the Code of Civil Procedure (C.P.C.). Learned Counsel has relied on the following authorities :

(1) K.S.Bhoopathy and ors. Vs. Kokila and ors., (2001)2 BLJR 839;

(2) Bakhtawar Singh and anr. Vs. Sada Kaur and anr., (1996)11 SCC 167;

(3) Sushil Vs. Harishankar Ramnivas Sharma and ors., 2016(4)Bom. C.R. 160;

(4) Papinayakanahalli Venkanna and ors., Janadri Venkanna Setty (by LRs.), AIR 1985 Karnataha 166;

(5) Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior and ors., AIR 1987 SC 88;

5. I have considered the submissions made by the learned Counsel for the petitioners. I have also perused the relevant provisions of Order XXIII, Rule 1(4) of C.P.C. and gone through the citations relied on.

6. The respondents herein had filed the suit (R.C.S. No.234 of 2015) for the relief of declaration of their title to the suit land and consequential relief of perpetual injunction, restraining the defendants therein from obstructing the possession over the suit land. The respondents/plaintiffs filed pursis (Exh.25) stating therein, that they propose to implead the State of Maharashtra, through its Collector, as party to the suit and also propose to proceed against the District Superintendent of Land Records, Beed. It was also stated in the pursis that the respondents/plaintiffs proposed to withdraw the suit and file a fresh suit in the Court of learned Civil Judge, Senior Division. In the very pursis, the respondents/plaintiffs sought for permission to withdraw the said suit.

7. Learned Civil Judge, Junior Division was pleased to call upon the petitioners/defendants to file their reply/say to the pursis. The

petitioners/defendants objected to the prayer for withdrawal of the suit by claiming costs.

8. Learned Civil Judge, Junior Division then passed the following order below Exh.25.

नि. २८ कडे वार्दीनी दावा काढून घेत असले बाबत पुरसिस दिली आहे. परंतू प्रतिवार्दीनी त्यास हरकत घेऊन खर्चाची मागणी केलेली आहे. प्रतिवादी हे समन्स बजावलेनंतर हजर होऊन कैफियतही दाखल केलेली आहे. अशा वेळी वार्दीनी दाखल केलेल्या दाव्यामुळे प्रतिवार्दीना झालेला खर्च देणे आवश्यक आहे. त्यामुळे मी पुढील आदेश करीत आहे.

१) दावा नि. २८ कडील पुरसिस प्रमाणे काढून घेतल्याने निकाली काढण्यात येतो.

२) वार्दीनी प्रतिवार्दीना दाव्यात खर्च म्हणून २,०००/- (दोन हजार) रुपये द्यावेत.

It is true that the impugned order does not state in so many words that the respondents (plaintiffs) were allowed to withdraw the said suit with permission to institute a fresh suit in respect of the same subject matter of the such suit.

9. In the the pursis (Exh.25) the respondents/plaintiffs had made it clear that they proposed to file a fresh suit by impleading the State

of Maharashtra, through Collector, Beed and the Superintendent of Land Records, Beed, as parties to the suit. Order XXIII, Rule 1 of C.P.C. reads thus:-

1. Withdrawal of suit or abandonment of part of claim.-

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

....
....

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

10. It is true that learned Civil Judge, Junior Division did not specifically grant the respondents/plaintiffs permission to institute a fresh suit based on the same cause of action. It has, however, to be impliedly read in the impugned order that when the respondents/plaintiffs had specifically stated in their pursis about their proposal to file a fresh suit and there being no specific objection thereto on behalf of the petitioners/defendants, the respondents/plaintiffs were justified in filing the fresh suit (R.C.S. No.91 of 2017), on the same cause of action. I have perused the impugned order. The Trial Court has given sound reasons for rejection of the application (Exh.29). There can be no two views about the legal preposition emerged from the authorities

relied on by learned Counsel for the petitioners. Each case has to be decided in the facts and circumstances of its case. Change of even a fact here or there would make a lot of difference for application of a precedent. The Trial Court's failure to record reasons to permit the respondents/plaintiffs to withdraw the suit and file a fresh suit in respect of the same subject matter, cannot be read as a refusal to grant such permission.

11. In view of the above, no interference with the impugned order is called for. The Civil Revision Application stands dismissed.

[R.G. AVACHAT, J.]

kbp