

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 447 OF 2016

Vijay Abu Jadhav & Ors.Applicants

V/s.

Mr. Sunil Ramkumar Agarwal
and Ors.Respondents

APPEARANCES :

Mr. Pratap Patil, Advocate for the applicants.

Mr. Sumit Kothari, Advocate for respondents no.1, 2
and 3.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 25th June, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Petitioners-Defendants no.3, 4, 6, 7 and 8 in Regular Civil Suit No. 1493 of 2014 had filed an application under Section 9A of the Civil Procedure

Code and objected to the jurisdiction of the Court. The preliminary issue was framed; “Whether the Court is having jurisdiction to try and decide the suit in view of the provisions of the Bombay Tenancy and Agricultural Lands Act ?”

3. Subject suit was instituted by the respondent seeking declaration of his title to the suit property. The defendants contended that since proceedings under the Bombay Tenancy and Agricultural Lands Act were on going, in respect of the suit property, the suit was not maintainable and in view of this, preliminary issue as aforestated was framed. Pending decision, on the preliminary issue, the plaintiff applied and requested the trial Court to abandon the prayer of declaration of his title to the suit property with liberty to institute fresh suit, if occasion arises. The learned Judge vide order dated 28th April, 2016 permitted the plaintiff to abandon the prayer of declaration, however, refused the

leave to institute a fresh suit. Thus, in view of abandonment of first prayer of declaration of title, preliminary objection to the jurisdiction of the Court, has been rejected vide order dated 30th April, 2016.

4. This Revision, is preferred against the order declining leave, under Order 23 Rule 3 of the CPC, to institute a fresh suit upon abandoning part claim. Obviously, the Revision Application under Section 115 CPC is not maintainable against the order refusing the leave to institute fresh suit.

5. The Civil Revision Application is dismissed.

(SANDEEP K. SHINDE, J)