

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION (ST) NO.22829 OF 2018

Dilip Ganpatrao Bharitkar
and anr.

.....Applicant

V/s.

M/s. Sai Shraddha Developers,
a Partnership Firm, its partners
Sunil B. Rathi and Ors.

....Respondents

* * * *

Mr. S.V. Sadavarte, Advocate for the applicant.

Mr. R.D. Soni i/by. Ram & Co., Advocate for respondents
no.1.1 to 1.4.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 10th January, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. This application was heard on 4th January, 2019 when after arguing for sometime, the learned Counsel for the applicant sought time to take instructions from his client for withdrawing this application. Accordingly, time was granted.
3. The learned Counsel for the applicant submits that, he

has no instructions and submitted that application be decided on merits.

4. This application is under Section 24 of the Code of Civil Procedure. Vide this application, the applicants are seeking transfer of Special Suit No. 35 of 2008 filed by respondent no.1 before the Civil Judge Senior Division, Sangamner to the Court of Civil Judge Senior Division, Pune where Special Civil Suit No. 1179 of 2010 (Old RCS No. 2035 of 2012) filed by the applicants is pending. Respondent no.1 has filed Special Civil Suit No. 35 of 2008 for specific performance of contract at Sangamner. This suit is at the stage of arguments wherein the applicants who are the defendants in the said suit had led evidence and submitted themselves to the jurisdiction of the said Court. That in the year 2010, the present applicants have filed the Special Civil Suit No. 1179 of 2010 in the Court of Civil Judge Senior Division, Pune for partition wherein respondent no.1 is one of the defendants. I have perused the Affidavit filed by respondent no.1 which is at page-127. In para-3 of the said Affidavit, it is stated that the aforesaid suit was filed in the

year 2008 and the evidence is virtually complete and the suit is at the stage of arguments. It is stated in para-6 of the said Affidavit that, Special Civil Suit No. 1179 of 2010 which is filed by the present applicant at Pune is at the stage of framing issues and the pleadings are not even complete.

5. The applicants herein have not disputed these facts and no counter affidavit is filed by them.

6. Thus, considering the facts of the case, I am not inclined to grant this application, in as much as, the applicants herein did not take any steps since 2008 or atleast from 2010 when they had filed the suit for partition at Pune. The Affidavit filed by the respondents clearly indicates that the applicants herein had submitted to the jurisdiction of the Court of Civil Judge Senior Division, Sangamner. As such, I do not see any merit in the application. The Miscellaneous Civil Application is rejected with no order as to costs.

(SANDEEP K. SHINDE, J)