

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO. 26755 OF 2018

1. Yashodabai Nivrutti Shelar

& Ors.

.. Petitioners

Vs.

1. Rahul Namdev Shelar

& Ors.

.. Respondents

Mr.Sandeep Madhukar Phatak, for petitioners.

None for respondents.

CORAM : N.J. JAMADAR, J.

DATE : 22ND JULY 2019

P.C.

1 Heard the learned counsel for the petitioners.

2 The petitioners, who were the defendant Nos. 3 to 7 in Regular Civil Suit No. 1921 of 2017, before the learned Civil Judge, Junior Division, Pune have assailed the order passed by the learned Civil Judge, on Entry No. 6681/2018, whereby the application of the petitioners for restoration of R.C.S.No. 1921 of 2017 to file, which was permitted to be withdrawn by order dated 25th July 2018, came to be rejected.

3 The petition arises in the backdrop of the following facts :-

For the sake of convenience and clarity, the parties are referred to in the capacity in which they were arrayed before the trial Court.

The plaintiffs-respondent Nos. 1 to 4 herein had instituted R.C.S. No. 1921 of 2017 against the defendant Nos.1 and 2-respondent No.5 and 6

and the defendant Nos.13 and 14-respondent Nos. 12 and 13 herein, for a declaration that the building permission granted by the defendant Nos. 13 and 14 in favour of the defendant No. 2 be declared as null and void. The plaintiffs had further prayed that the defendant No. 2 be restrained from carrying out construction on the property in question in pursuance of the building permission granted by the defendant Nos.13 and 14 as it was the claim of the plaintiffs that the suit property was the joint family property. The plaintiffs as well as the heirs of the other brothers of defendant No.1-Arun Chandar, had shares in the suit property.

4 During the pendency of the said suit, by an order dated 27th April 2018, the defendant Nos. 1, 2, 13 and 14 were restrained by an order of temporary injunction from carrying out further construction on the suit property on the basis of the sanctioned building plan till the final decision of the suit.

5 The grievance of the defendant Nos.3 to 7 is that while the temporary injunction was in operation, the plaintiffs and defendant Nos.1 and 2 entered into an agreement and surreptitiously withdrew the said suit and thereby caused serious prejudice to the rights of the plaintiffs. Since withdrawal of the said suit was permitted without providing an opportunity of hearing to the defendant Nos.3 to 7, they preferred an application for restoration of R.C.S.No. 1921 of 2017 to file. The learned

Civil Judge, by the impugned order dated 30th August 2018, was persuaded to reject the said prayer. Hence, this petition.

6 The learned counsel for the petitioners invited the attention of the Court to the *inter-se* relationship between the plaintiffs and the defendant Nos.1 and 3 to 7. It was urged that plaintiffs had obtained the temporary injunction against the defendant Nos.1 and 2 on account of the support to the cause rendered by the defendant Nos.3 to 7 by way of written statement. The withdrawal of the suit and consequent vacation of the injunctive relief, which restrained the defendant No.2 from carrying out further construction on the suit land, thus, caused serious prejudice to the petitioners. Had the petitioners been given an opportunity to submit reply to the application for withdrawal, the petitioners would have made an appropriate application to transpose themselves as the plaintiffs and in that event the injunctive relief would have remained in operation.

7 The submission is required to be appreciated in the backdrop of the fact that the suit was permitted to be withdrawn in pursuance of a withdrawal pursis (Exh.84), which was of unconditional nature. The learned Civil Judge was persuaded to reject the prayer of the petitioners to restore the the suit to file on two principal grounds. One, in the said suit, no relief was claimed against the petitioners herein, and, therefore the

failure to obtain their say to the application for withdrawal was not fatal. And, two, the plaintiffs being *dominus litus*, they were at liberty to withdraw the suit unconditionally and they could not have been forced to prosecute the suit. It is indisputable that no relief was sought against the defendant Nos.3 to 7 in the said suit. Since the suit was withdrawn unconditionally, there was no occasion for the trial court to wait for a detailed resistance to be put-forth by the defendants thereto. Even otherwise, the suit was instituted principally for grant of injunctive relief. The withdrawal of the said suit does not preclude the petitioners from agitating their claim. The petitioners can very well agitate their grievances by instituting properly constituted suit with substantive reliefs.

8 In the circumstances, no interference is warranted in the impugned order in exercise of the extraordinary jurisdiction.

9 The writ petition stands dismissed.

10 It is, however, made clear that this Court has not examined the merits of the claim of the petitioners as regards their proprietary rights over the suit property. All contentions in that regard shall remain open for consideration.

(N.J. JAMADAR, J.)