

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

***SECOND APPEAL NO.214 OF 2019  
WITH  
CIVIL APPLICATION NO.446 OF 2019***

Smt. Surekha Narayan Patil ... Appellant  
Vs  
Shri Anand Chandar Patil and Ors. ... Respondents

...

Mr. B.K.Raje for the Appellant.

***CORAM : SANDEEP K. SHINDE J.  
DATE : 19 MARCH, 2019***

***P.C. :***

Appellant/plaintiff had filed Regular Civil Suit No.605 of 2003 (First Suit) for declaration of her rights and share in the suit property. The first suit was withdrawn on 20<sup>th</sup> August, 2004 on the premise that disputes and differences were settled and would execute terms of settlement. Application for withdrawal of suit dated 20<sup>th</sup> August, 2004 was made by the present appellant, who was plaintiff no.1 and one Kiran Narayan Patil, plaintiff no.2. Accordingly, suit was withdrawn by the plaintiffs/appellants but did

not seek leave to file suit afresh.

2           In November, 2007, appellant instituted Regular Civil Suit No.768 of 2007 in absence of accrual of fresh cause of action, but on the ground that the first suit was withdrawn on misrepresentation of the defendants and under undue influence.

3           Indisputedly, while withdrawing the suit, leave was not obtained to institute a fresh suit in respect of the subject matter of such suit or such part of the claim and, therefore, both the Courts have held that the suit in question, i.e., Regular Civil Suit No.768 of 2007 was not maintainable.

4           Courts below have also recorded the finding of fact that the plaintiffs could not establish that the first suit was withdrawn by them on account of fraud practised by the defendants.

5           Thus, taking into consideration facts of the case and the finding recorded by the Courts below which is consistent with the evidence on record, appeal does not give rise to substantial question of law. Appeal is dismissed. Civil Application is disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**