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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14261 OF 2017

Tarabai Gulab Wagaskar & Ors.	..Petitioners.
V/s.	
Sandeep Arjun Bhandare & Ors.	..Respondents.

Ms.Shakuntaka Joshi with Nikita Pawar & Jalpa Pithadia I/b. S.I.Joshi & Co. for the petitioners.

Mr.Sumit V.Khaire for respondent Nos.1 to 7.

CORAM : M.S.SONAK, J.

DATE : MARCH 15, 2019

ORAL JUDGMENT

Heard Ms.S.I.Joshi, learned counsel for the petitioners and Mr.S.V.Khaire, learned counsel for respondent Nos.1 to 7 (original plaintiffs).

2. Ms.Joshi submits that the remaining respondents are served and in any case, she points out that the contesting respondents are respondent Nos.1 to 7, who are original plaintiffs.

3. Accordingly, Rule. Rule, made returnable forthwith. By consent of the parties, the matter is heard finally and disposed of.

4. In this petition, the petitioner has applied for the following substantive reliefs :-

“(a) That this Hon'ble Court be pleased to issue a writ, order or direction or writ in the nature of certiorari, calling for the records of the Suit being R.C. Suit No.229/2017 and after perusing the said records to quash and set aside the said judgment and order dated 17-11-2017 of the Trial Judge of the Hon'ble Court of C.J.J.D. Ghodnadi passed below Exhibit 59 making absolute the application and to dismiss the application;

(b) That this Hon'ble Court order and direct the Hon'ble Court of C.J.J.D. Ghodnadi Pune to hear and decide the application of the petitioners filed under Section 9(a) and section 7(ii) of the Code of Civil Procedure Code, 1908 challenging the jurisdictional issue before the Hon'ble Court;

5. In so far as relief in prayer clause (a) is concerned, there is no case made out to interfere with the order made. Learned trial Judge has merely permitted the plaintiffs to cross-examine the two witnesses. There is really no jurisdictional error in making of such an order dated November 17, 2017. Accordingly, the relief in terms of prayer clause (a) is declined.

6. In so far as clause (b) is concerned, Ms.Joshi is right in her submission that learned trial Judge is required to atleast take up for consideration applications under section 9A of the Civil Procedure Code ('the CPC' for short) and Order 7 Rule 11 of the CPC and thereafter dispose of the same in accordance with law on their own merits. There is no justification by learned trial Judge not to even take up these applications for consideration.

7. Accordingly, learned trial Judge is directed to take up for

consideration the applications under section 9A of the the CPC and Order 7 Rule 11 of the CPC and to dispose of the same in accordance with law and on their own merits, as expeditiously as possible, and in any case within a period of two months from the date this order is placed before learned trial Judge.

8. The parties are directed to appear before the trial Judge on March 27, 2019 at 11.00 a.m. and file an authenticated copy of this order.

9. It is made clear that this Court has not gone into the merits of the applications under section 9A of CPC and Order 7 Rule 11 of the CPC and, therefore, all contentions of the parties, including the contention relating to the maintainability specifically kept open for determination by learned trial Judge.

10. Rule in the petition is, therefore, made partly absolute in the aforesaid terms.

11. There shall be no order as to costs.

12. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)