

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 128 OF 2018

Sau. Manjusha Manishrao Deshmukh and another

vs.

Sau. Vanitabai Namdevrao Deshmukh and another

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. V. B. Bhise, counsel for applicants.

Shri. S. D. Talke, counsel for respondent No.1.

Shri. U. J. Deshpande for respondent No.2

CORAM : MANISH PITALE J.

DATED : 20/01/2020

By this revision application, the applicants (original plaintiffs) have challenged order dated 06/10/2017, passed by the Court of Civil Judge Junior Division, Telhara, District Akola, in Regular Civil Suit No.08/2011, whereby an application filed by the applicants under Order 23, Rule 1(3) of the Civil Procedure Code 1908 (CPC) to withdraw the suit with liberty to institute a fresh suit, has been rejected.

2. The suit in the present case filed by the petitioners was pending since the year 2011. The suit in the first instance was decreed in favour of the petitioners herein. An application under Order 9 Rule 13 of the CPC was filed on behalf of the respondent No.2, which was allowed, by order dated 29/04/2017. Thereafter, written statement was filed on behalf of the respondents (original defendants).

3. At this stage, an application was filed on 10/08/2017 by the petitioners seeking to withdraw the suit with liberty to file a fresh suit in respect of the same cause of action in the interest of justice. In this cryptic application, it was only stated that the suit had some technical defect and it was for this reason that the aforesaid prayer was made in the said application. This application was marked as Exh.26.

4. The learned counsel appearing for the applicants submitted that the technical defect was that the petitioners ought to have file suit for partition also apart from the aforesaid reliefs for which the suit was filed. It was claimed that all the pleadings pertaining to the suit property being joint family property and other such relevant pleadings were stated in the plaint, but the prayer for partition was not made. It was submitted that instead of changing the nature of the suit, for overcoming technical defect, the aforesaid application under Order 23, Rule 1(3) of the CPC was filed. It was submitted that in the interest of justice such application ought to have been allowed.

5. On the other hand, the learned counsel appearing for the respondent No.2 submitted that a perusal of the application would show that no details regarding alleged technical defect were placed on record and in terms of the strict requirement under Order 23, Rule 1(3) of the CPC, the revision application deserved to be rejected.

6. The learned counsel for respondents No.2 placed reliance on the judgment of this Court in the case of **Veerbhadrappa s/o Mahadappa Rachatte vs. Mahalingappa s/o. Gurlingappa Karanje, 2009(4)Mh.L.J. 108** and it was submitted that as per the requirement of law, the technical defect, if any ought to have been stated in detail in that application and since the application filed by the petitioner in the present case did not give any details, no error could be attributed to the impugned order.

7. Heard the learned counsel for the rival parties. Perused the relevant material and judgment relied upon by the learned counsel for the respondents. It is clear that the requirement under Order 23, Rule 1(3) of the CPC is strict and casual application under the said provision cannot be entertained by the Court. A perusal of the application (Exh.26) shows that it is stated that there was some technical defect in the suit filed on behalf of the petitioners, but no further details were forthcoming. It is in this backdrop, that the Court below specifically observed in the impugned order that it was impossible to determine from the application as to what was the technical defect. In the absence of details, it was difficult even for the respondents to resist such an application.

8. In view of the aforesaid provision and the law laid down by this Court, no fault can be found in the impugned order passed by the Court below. There can

be no error attributed to the impugned order, because it has been found that the application at Exh.26 filed on behalf of the petitioner is completely bereft of details of the alleged defect that the suit suffered from. This Court is unable to agree with the learned counsel for the applicants that even if the details regarding alleged defect in the suit were not stated in the application Exh.26, the Court below could have entertained the application to pass suitable orders.

9. Therefore, this Court finds that there is no merit in the present revision application and accordingly it is dismissed.

10. At the same time, since the application Exh.26 has been rejected by the Court below only on the ground that details of the alleged technical defect has not been placed on record, in the facts and circumstances of the present case and in the interest of justice the petitioners are granted liberty to move an appropriate application, if so advised to give details of technical defects, if any in the suit for moving an appropriate application and to make suitable prayers before the Court below.

11. The revision application is disposed of. No order as to costs.

JUDGE