

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

CIVIL REVISION APPLICATION NO.592 OF 2018

Mr. Vasant Ekanath Sandbhor

..Applicant

Versus

Bhumi Horticulture Pvt. Ltd.

Through its Director

Mr. Rahul Rasiklala Nahar and Ors.

..Respondents

Mr. Vikram Chavan a/w Nikita K. Dharamshi i/by C. K. Legal, for the Applicant.

Mr. Vilas B. Tapkir a/w Mrunmayi Khambete, for Respondent Nos.1 & 2.

Mr. Atul P. Vanarse, for Respondent No.3.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th JANUARY, 2022

PC.

1. The revision application can be conveniently disposed of finally having regard to the facts and circumstances of the case.

2. The suit is preferred by the applicant being RCS No.428 of 2008 on the file of Civil Judge Junior Division, Rajgurunagar praying therein a declaration that the suit property mentioned in the plaint is the property of Hindu Undivided Family. Prayer for grant of perpetual injunction restraining respondents from interfering and creating third party rights in relation to suit property was made.

3. After the trial in the suit commenced, the applicant/plaintiff changed his lawyer and took out application Exh.36 under the provisions of Order XXIII Rule 1(3) of the CPC seeking withdrawal of the suit with liberty to file fresh.

4. Vide impugned order dated 30th July, 2018, the Court below rejected the prayer. As such, this petition.

5. Learned counsel for the applicant/plaintiff concedes that the pleadings in the application Exh.36 is not supporting case of formal defects which should have been expressly pleaded so as to warrant exercise of power under Order XXIII Rule 1(3) of the CPC. As such, according to him, he shall not be pressing said application Exh.36 and that being so, order passed below therein be quashed and set aside with liberty to file fresh application.

6. The prayer is objected by Mr. Vilas Tapkir, learned counsel for respondent Nos.1 and 2 and also Mr. Atul Vanarase, learned counsel appearing for rest of the respondents on the ground that the suit is at the advanced stage and Court should not interfere at this stage of the proceedings.

7. Considered submissions.

8. Primarily, what has been contended by the petitioner/applicant that the formal defects as contemplated under Order XXIII

Rule 1(3) of the CPC is required to be pleaded is very much justified from the said provision.

9. In that view of the matter, application stands allowed subject to payment of cost of Rs.5000/- in the Court below in RCS Suit No.428 of 2008. Application Exh.36 stands disposed of as not pressed.

10. Applicant is at liberty to make fresh application under Order XXIII Rule 1(3) of the CPC thereby incorporating appropriate pleadings. The order impugned stood modified to that effect.

11. The revision application stands allowed in the above terms.

12. The Trial Court shall be at liberty to order apportionment of the cost once the amount of cost is deposited.

[NITIN W. SAMBRE, J.]