

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5937 OF 2022

RADHABAI DAMU PATIL AND OTHERS
VERSUS
UDDHAV DAMU PATIL

— — —

Mr. Priteshkumar N. Jain, Advocate for the Petitioners.
Mr. Sharad V. Natu, Advocate for the Sole-Respondent.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 12, 2023.

PER COURT :

1. Heard the learned counsel appearing for the Petitioners.
2. Being aggrieved by the order dated 16.11.2021 permitting the Respondent-original plaintiff to withdraw the Regular Civil Suit No.61 of 2017, the present writ petition has been preferred.
3. Regular Civil Suit No.61 of 2017 was filed by the Respondent against the petitioners for injunction, restraining the Petitioner from alienating the suit property on 15.06.2017. On 13.06.2019, the Respondent submitted his affidavit of evidence and 15.07.2019, an application for amendment was filed under Order 6 Rule 17, which came to be allowed. After carrying out the

amendment for bringing on record the Petitioner No.3, the application was filed below Exh.46 on 14.09.2021 seeking to withdraw the suit with liberty to file comprehensive and detailed suit for partition.

4. Learned counsel for the Petitioners submits that application was filed under Order XXIII Rule 21 on the ground that the suit would fail by reason of formal defect and hence in event the formal defect can be corrected by way of an amendment, it is not necessary to permit the withdrawal of the suit. In support of his contention, he relied on the decision of the High Court of Kerala, in the case of the *Shiby M Chacko vs. Litha Skaria*, reported in **LAWS (KER) 2018 10 172**. Taking support of the said decision, he would contend that when an error or omission can be cured in the same proceedings, there are no sufficient grounds for granting permission to withdraw the suit with liberty to institute fresh suit.

5. *Per contra*, learned counsel appearing for the Respondent submits that pursuant to the permission granted vide order dated 16.11.2021, the fresh suit has already been filed, and as such, the petitioners, only to delay the trial of the suit, has filed the present proceeding.

6. The submissions raised by the learned counsel for the petitioners objecting to the withdrawal of the suit were not raised before the trial Court and on the contrary the petitioners have submitted the orders of the Court. In my view, as none of the

objections which have been raised by the petitioners before this Court, were placed for consideration before the Trial Court. The impugned order is not liable to be interfered with. It is sufficient, if the Court is satisfied that there was sufficient cause for permitting the Respondent to withdraw the suit with liberty as prayed.

7. For the reasons stated above, I am not inclined to interfere with the impugned order.

8. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)