

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9465 OF 2023

Geetanjali Sunil Bilapatte And Another Petitioners

Versus

Madhav Laxman Billapatte And Others Respondents

Mr. P.F. Patni, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Joint Civil Judge, Junior Division, Ahmedpur, below Exhibit-70 in Regular Civil Suit No. 650/2017, thereby allowing the application filed by the plaintiffs for withdrawal of suit with liberty to file fresh suit on same cause of action.

2. Respondents/plaintiffs filed suit for possession of the suit land. Petitioners/defendants appeared and resisted the suit by filing written statement. After the issues were framed and evidence was to commenced, plaintiffs filed application Exhibit-17, under Order XXIII Rule 1(3) of CPC, contending that during the pendency of litigation, Court appointed the Court

Commissioner for scientific local investigation and the suit land was measured. From the report, it is revealed that only defendant Nos. 3, 5 and 6 have illegally encroached over 1 Hectare 29 Are land, hence, plaintiffs wanted to amend the plaint and to strike out remaining defendants. It is further contended that the defects of pleadings are fatal defects and this cannot be cured by moving appropriate amendment application as the application will be filed at a belated stage and the it may not be maintainable. Defendants by a detail say resisted the application. Trial Court has allowed the application. Hence, the present petition.

3. Heard the learned advocate for the petitioners. Perused the writ petition memo, annexures and the impugned order.

4. Learned advocate for the petitioners contends that defect in the plaint could have been cured by respondents/plaintiffs by way of amendment and deletion of parties. Trial Court has erred in granting permission to the respondents/plaintiffs to withdraw the suit with liberty to file fresh suit on the same cause of action.

5. Trial Court has exercised discretion in favour of the respondents/plaintiffs by granting permission to withdraw the suit and file fresh suit, on the same cause of action, by relying on V. Rajendra Vs. Annasamy Pandian, (2017) 5 SCC 63, wherein it is held that, '*misjoinder of parties in a suit is a formal defect and on this ground alone the suit is likely to be failed.*' No prejudice is caused to the petitioners/defendants by the impugned order. This Court is not sitting as a Appellate Court. No jurisdictional error or error of law is committed by the Trial Court while passing the impugned order. No case is made out by the petitioners to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]