

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.5683 OF 2023**

**SANGITA KAILAS INAMKE THROUGH GPA AJINKYA KAILAS INAMKE  
VERSUS  
UMESH SAGAJI INAMKE**

...  
Advocate for Petitioner : Mr. Amol S. Gandhi

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 18<sup>th</sup> AUGUST, 2023**

**PER COURT :**

1. Order dated 18/07/2022, passed by learned Civil Judge, Senior Division, Rahata, below Exhibit-12 in Regular Civil Suit No.212/2021, is challenged in the present petition.

2. Respondent/plaintiff filed the suit for possession and permanent injunction against the petitioner/defendant. Defendant filed application Exhibit-12 contending that the suit is filed by suppressing the material facts. Earlier R.C.S. No.326/2016 was filed by the plaintiff and in the said suit compromise decree was passed, therefore, the present suit is barred by Order 2 Rule 2(D) and Section 11 of the Code of Civil Procedure. Plaintiff opposed the said application by filing say.

3. Trial Court has held that earlier R.C.S No.326/2016 was filed in respect of Gut No.501, for declaration and injunction. Prior

to that, in the year 1978, R.C.S. No.1058/1978 was filed for partition. The application is rejected by the Trial Court on the ground that plaintiff has not claimed relief of partition and the reliefs claimed in the present suit and the earlier suit are different and therefore, bar under Order 2 Rule 2 is not applicable to the facts of the present case.

4. From the pleadings of the plaintiff, *prima facie* it is clear that the present suit is filed on the basis of subsequent cause of action. Reliefs claimed in the present suit and in the earlier suit are different. The trial Court is, therefore, justified in passing the impugned order. There is no illegality or perversity in the order impugned in present petition. Therefore, no case is made out by the petitioner to warrant interference in the impugned order in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

**(NITIN B. SURYAWANSHI, J.)**