

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

CIVIL REVISION APPLICATION NO.227 OF 2015

Dattatraya s/o. Ramji Mangnale,
Age 42 year, Occ-Service,
R/o.Phulwal, Tq.Kandhar
Dist.Nanded.
At present resident of
Police Head quarters
Tq. & Dist. Nanded.

.. APPLICANT

VERSUS

Sow. Anuja w/o. Dattatraya Mangnale
Age 32 years, Occ-Household
R/o. Phulwal, Tq.Kandhar,
Dist. Nanded.
Presently resident of Deulgaon,
Tq. Loha, Dist. Nanded.

.. RESPONDENT

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Mr.S.V.Kurundkar along with Mr.R.N.Chavan, Advocates for
the applicant.
Mr.A.M.Gaikwad, Advocate for the respondent

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 16.06.2023.
Pronounced on : 06.07.2023

ORDER :

1] By the present Civil Revision Application, the
applicant is challenging the impugned order dated
22.09.2015 passed by the Civil Judge Junior Division, Loha,

District Nanded below Exh.47 in Regular Civil Suit No.13 of 2023.

2] It is the case of the applicant that the respondent – defendant is legally wedded wife of the applicant – plaintiff and marriage between the applicant and the respondent was solemnized in the year 1995 as per Hindu customs and rites. The applicant – plaintiff was recruited in the police department. It is further the case of the applicant that the applicant has purchased the plot in Sai Golden City at Loha in the name of the respondent – wife in order to ensure that his wife lives happy and secured life. It is further the case of the applicant that the respondent – wife, thereafter, left the company of the applicant and filed criminal complaint against the applicant under Section 498A of the Indian Penal Code.

3] The applicant, thereafter, filed Regular Civil Suit No.13 of 2023 for declaration that the suit property standing in the name of the respondent – wife is a joint family property. It is further the case of the applicant that

thereafter the applicant has filed an application under Order 23 Rule 1 (3) of the Civil Procedure Code, seeking leave to withdraw the present suit with liberty to institute another suit on the same cause of action as there is defect in the plaint. The application for withdrawal of the suit is filed on the ground that his mother is not made a party in the suit as the suit property is a joint family property, so also, the transaction of the purchase of the property and source of money remained to be indicated in the plaint. As such, he prayed that he be permitted to withdraw the suit with liberty to institute another suit on the same cause of action.

4] After considering the rival submissions of the parties, the trial Court rejected the application filed by the applicant by order dated 22.09.2025. Against the said order, the present Civil Revision Application is filed.

5] From the material before the trial Court it is to be noted that the suit is instituted in the year 2013, the issues are framed on 21.04.2014 and the evidence of the plaintiff – petitioner was completed. Thereafter, the

evidence of the defendant – respondent had started. On two occasions, the suit was adjourned for the cross examination of the defendant – respondent on the application of the applicant – plaintiff and thereafter the Application under Order 23 Rule 1 (3) of the CPC for withdrawal of the plaint and for permission to file the same on the same cause of action was filed by the applicant.

6] It is to be noted that earlier the application for amendment of plaint was filed and the same was also rejected. In the application for amendment of the plaint, there was mention about the fact that the plaintiff's mother remained to be added as plaintiff in the suit. Also in the cross examination of the plaintiff, the admissions are given by the plaintiff which could have adversely effect the suit of the plaintiff.

7] The trial Court, after considering all these facts, held that the suit is at the advanced stage, therefore, permission to withdraw the suit and file the fresh suit on the same cause of action, cannot be granted.

8] Apparently, the application filed for withdrawal of the suit / plaint is not bonafide and the same is filed only to wriggle out of the admissions given by the plaintiff. In view of the same, I do not find any error committed by the trial Court while rejecting the application seeking leave to withdraw the suit with liberty to institute another suit on the same cause of action. There is no jurisdictional error committed by the trial Court while rejecting the application for withdrawal of the suit.

9] In view of the same, the present Civil Revision Application is rejected.

[ARUN R. PEDNEKER]
JUDGE