

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5421 OF 2016

Waman Narayan Kamble

Petitioner

Versus

Sukdeo Haribhau Kamble And Others

Respondents

Mr. B.S. Kudale, Advocate for petitioner.

Mr. M.P. Kale, Advocate for respondent Nos. 1a to 1e.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th OCTOBER, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned Civil Judge, Junior Division Wadvani, below Exhibit- 1 and 26 in Regular Civil Suit No. 99/2014.

2. Petitioner/plaintiff filed Regular Civil Suit No. 27/2013 against respondents/defendants for declaration of ownership of suit property and perpetual injunction. Said suit was withdrawn by petitioner by filing purshis (Exhibit-22) on 30th June, 2013, informing the Trial Court that plaintiff and defendants have amicably settled the dispute out of the Court and therefore plaintiff does not wish to prosecute the suit and he intends to withdraw the same. Considering the purshis at

Exhibit-22, Trial Court noted the fact of compromise and since dispute is amicably settled between the parties, permitted plaintiff to unconditionally withdraw the suit on the basis of compromise.

3. Petitioner thereafter filed Regular Civil Suit No. 99/2014 for the same reliefs which were claimed by petitioner in earlier suit i.e. Regular Civil Suit No. 27/2013. Petitioner has contended that though there was compromise between petitioner and respondents, respondents have failed to honour the compromise and therefore he is constrained to file the present suit. On receipt of suit summons, respondents appeared and filed application under Order 7 Rule 11 (d) of the CPC contending that prayers made in earlier suit and the present suit are same and since earlier suit is unconditionally withdrawn by petitioner, present suit is not maintainable. Petitioner opposed the application by filing a detail say at Exhibit-28. He submitted that earlier suit was not adjudicated on merit and cause of action in the present is suit different. Hence, application filed by respondents be rejected. Trial Court has allowed the application and rejected the suit under Order 7 Rule 11(d) of CPC. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto and the impugned order.

5. Prayers made in the earlier suit i.e. Regular Civil Suit No. 27/2013 are similar to the prayers made in the subsequent suit. However, fact remains that previous suit was withdrawn by petitioner as the matter was amicably settled outside the Court and compromise was arrived at between the parties. Pursing Exhibit-22 to that effect is filed on record in the previous suit and accepting said pursing Trial Court has recorded that the matter is compromised and no dispute remains between the parties and therefore, Trial Court by order dated 30.06.2013 permitted petitioner to unconditionally withdraw the suit.

6. On going through the pleadings in the present suit i.e. Regular Civil Suit No. 99/2014, it is clear that petitioner has categorically averred that earlier suit was unconditionally withdrawn by petitioner as the dispute between parties was amicably settled. However, respondents refused to honour the compromise and therefore, he is constrained to file present suit. It is therefore clear that the present suit is filed on different cause of action and therefore though similar prayers are made in

the present suit, the same is maintainable. Petitioner cannot be deprived of his right to agitate his grievance that respondents have not honoured the compromise. These aspects are ignored by the Trial Court while passing the impugned order. The impugned order, therefore, cannot be sustained. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 13.10.2015, passed by learned Civil Judge, Junior Division, Wadwani, below Exhibit-1 and 26, in Regular Civil Suit No. 99/2014 is hereby quashed and set aside.

[NITIN B. SURYAWANSHI, J.]