

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3176 OF 2017
WITH
CIVIL APPLICATION NO.1443 OF 2019
IN
WRIT PETITION NO.3176 OF 2017**

Narayam Krishna Narvekar and Anr. ... Petitioners

V/s.

Krishna Parvata Narvekar and Ors. ... Respondents

Mr. Chetan G. Patil, for the Petitioners-Applicants.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 17 2023

P.C.:

1. By this petition under Article 227 of Constitution of India, the petitioners/ original plaintiffs are challenging order passed by the Trial Court along with the application under Section 10 of the Code of Civil Procedure, 1908.

2. The petitioners filed Regular Civil Suit No.16 of 2012 seeking relief of partition and separate possession.

3. Before filing of Regular Civil Suit No.16 of 2012, the respondent No.1 had filed Regular Civil Suit No.9 of 2004, against respondents Nos.2, 5, 6 and 7 for injunction and possession. The Trial Court on 13th February 2012 decree the Regular Civil Suit No.9 of 2004. Respondent No.6 filed Regular Civil Appeal No.20 of

2012.

4. During the pendency of the Regular Civil Appeal No.20 of 2012, respondent No.1 filed an application under Section 10 of Code of Civil Procedure 1908 in Regular Civil Suit No.16 of 2012 contending that issues raised in Regular Civil Suit No.16 of 2012 were directly and substantially issued in previous suit bearing Regular Civil Suit No.9 of 2004.

5. The Trial Court by order dated 28th September 2016 allowed the application, thereby granting stay to further proceedings of Regular Civil Suit No.16 of 2012.

6. The petitioners, therefore, challenges the order of Trial Court by present petition. This Court by order dated 11th July 2018 issued notice for final disposal to respondents. The office remarks dated 11th October 2023, indicate that notices of respondent Nos. 1 to 9 are duly served as per Bailiff's report. Learned advocate for the petitioner has filed additional affidavit annexing copy of compromise entered into between the appellants and respondents in Regular Civil Appeal No.20 of 2012.

7. Perusal of the compromise in Regular Civil Appeal No.20 of 2012 dated 12th October 2012, it appears that the parties to the earlier suit i.e. Regular Civil Suit No.9 of 2004, have admittedly resolved their dispute. Therefore, Regular Civil Appeal No.20 of 2012 stands disposed of. Once the earlier proceedings stands disposed of, the basis of filing of application under Section 10 of Code of Civil Procedure, 1908 is extinguished. Therefore, the impugned order can no longer continue. Hence following order:

8. The impugned order dated 28th September 2016 passed in | Regular Civil Suit No.16 of 2012 below Exhibit-124 is quashed and set aside.
9. The Trial Court shall decide the Regular Civil Suit No.16 of 2012 on its own merits.
10. The writ petition stands disposed of. No costs.
11. Considering the pendency of the suit from 2007, the Trial Court is directed to decide the suit as expeditiously as possible.
12. In view of the dismissal of the writ petition civil application is rendered infructuous. The same stands disposed of.

(AMIT BORKAR, J.)