

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

CIVIL REVISION APPLICATION NO.92 OF 2021

Panchamram Ramnath Pal Applicants

versus

Amarnath Algu Pal & Ors. Respondents

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- Ms. Kalyani Wagle a/w T. N. Tripathi and Co., Advocate for Applicants.
- Mr. Vinod Kumar Shukla a/w R. S. Tripathi, Advocate for Respondent Nos.7 to 9.

CORAM : SARANG V. KOTWAL, J.
DATE : 15th MARCH, 2023

P.C. :

1. Heard Ms. Kalyani Wagle, learned counsel for the Applicant and Mr. Vinod Kumar Shukla, learned counsel for the Respondent Nos.7 to 9.

2. The Applicant had challenged the order dated 04/02/2020 passed by Civil Judge Senior Division, below Ex.61 in Special Suit No.52 of 2017. Vide the impugned order, the application filed by the Applicant for transposition of himself as the Plaintiff was rejected.

3. The Applicant was the Original Defendant No.15 in the said suit.
4. Learned counsel for the Applicant submitted that the powers of the Trial Court under Order 23 Rule 1-A are wide enough and therefore in the interest of justice, the Applicant was required to be transposed as the plaintiff for continuation of the suit. She submitted that the withdrawal of the suit by the Original Plaintiff is causing prejudice to the Applicant. She relied on the judgment of the Hon'ble Supreme Court in the case of ***R. Dhanasundari @ R. Rajeswari Vs. A. N. Umakanth & Ors.*** as reported in ***(2020) 14 Supreme Court Cases 1.***
5. Learned counsel for the Respondent Nos.7 to 11 submitted that no substantial question is raised by the Applicant and therefore the Applicant's application before the Trial Court was rightly rejected.
6. I have considered these submissions. I have perused the impugned order as well as the application preferred by the

Applicant vide Ex.61. The only ground taken by the Applicant in that application is that the Applicant has shown right, title and interest as the co-owner in the said suit land. The Original Defendant Nos.2 and 3 were carrying out illegal and unauthorized construction on the suit land and the Original Defendant Nos.1, 2, and 3 may grab the share of the Applicant if partition is not decreed. It is further mentioned that the Applicant herein had substantial question of share and partition of the suit property to be decided against the other Defendants and the Plaintiff and for avoiding multiplicity of the proceedings, the Applicant be permitted to be transposed in that suit.

7. The suit, as mentioned earlier, was filed by the Original Plaintiffs for declaration that the suit land was in possession of the Original Plaintiffs, for partition of the Original Plaintiffs' share. There were other reliefs claimed only against the Original Defendant Nos.1, 2 and 3. These prayers have nothing to do with the rights of the present Applicant. No substantial question as required under Order 23 Rule 1-A of the CPC are mentioned. The said rule reads thus;

“1-A. When transposition of defendants as plaintiffs may be permitted -

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.”

8. Learned Trial Judge had observed that the Applicant herein had not filed his Written Statement in the suit. The suit was filed on 14/01/2017 and his application below Ex.61 was filed on 09/10/2019. Quite obviously, it was filed just to prolong the proceedings. The Applicant had no right to create impediments in the withdrawal of this suit. Based of these reasoning the application was rejected.

9. I do not see any infirmity in the reasoning and hence I do not see any merits in these Civil Revision Application. It is accordingly dismissed.

(SARANG V. KOTWAL, J.)