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

CIVIL REVISION APPLICATION NO.205 OF 2023

Bhagwan Bhau Gavhane

Applicant

Versus

Rajaram Bhau Gavhane & others

Respondents

Mr. V. P. Narwade, advocate for the Applicant

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 24th January, 2024

PC :

Heard learned Counsel for the applicant finally at admission stage.

The application is filed challenging the order dated 28.08.2023 passed by the learned trial Court i.e. the Joint Civil Judge, Junior Division, Ashti, rejecting the application filed by present applicant i.e. original defendant no.1 under Order 7 Rule 11 of the Code of Civil Procedure.

The learned Counsel for the applicant pointed out that the present respondent i.e. original plaintiff had filed earlier partition suit bearing RCS No.451/2016 and it was

dismissed for non prosecution on 07.11.2019. Thereafter the respondent no.1-plaintiff again filed subsequent partition suit bearing RCS No. 98 of 2022 for the same relief by adding one more house property. The learned Counsel for the applicant submitted that the filing of subsequent suit is barred by Order 2 Rule 2 of the Code of Civil Procedure and there was no cause of action for filing such suit.

It is to be noted here that the earlier suit of respondent no.1 was, in fact, dismissed for default and was not decided on merits. Moreover, Order 2 Rule 2 of the Code of Civil Procedure, is for leave to file substantial suit later on for which the plaintiff is entitled for certain additional reliefs. Further, Order 9 Rule 9 of Code of Civil Procedure indicates that if the earlier suit of the plaintiff is dismissed for non prosecution, then he is precluded from filing the suit on the same cause of action. There is no bar for the plaintiff to file similar suit by adding certain properties on different cause of action.

In the instant matter, the plaintiff i.e. respondent no.1 has given fresh cause of action, which is certainly different from the cause of action mentioned in the earlier

suit.

Therefore, there cannot be bar under Order 2 Rule 2 of the Code of Civil Procedure in respect of fresh suit of the respondent no.1-plaintiff. Therefore, considering these aspects, there is no perversity in the order impugned and thus, the Civil Revision Application stands dismissed at admission stage.

(SANDIPKUMAR C. MORE)
JUDGE

adb