

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 572 OF 2024

Rajendra Baban Pangare

... Applicant

Versus

Sagar Balu Gole and Ors.

... Respondents

Mr. Drupad Patil a/w. Mr. Prasad Keluskar :-	Advocates for Applicant.
Mr. Amit Gharte :-	Advocate for Respondents No.1 and 2.

CORAM : S. M. MODAK, J.

DATE : 18th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Mr. Drupad Patil for Applicant/defendant No.4 in Suit filed in the year 2023. There is challenge to the order passed by the Court of Civil Judge Senior Division, Pune on 9th July 2024 (page No.177). By the said order he has rejected an application filed as per the provisions of Order VII Rule 11(a) and (b)

of the Code of Civil Procedure, 1908 (**CPC**). Learned Advocate Mr. Patil has invited my attention to the following documents :-

- (a) The copy of Special Civil Suit No.1129 of 2013 (page No.67) filed by the three plaintiffs who are purchasers of the suit property involved in 2023 Suit. He has invited my attention to the following averments :-
 - (i) The present applicant was defendant No.3 in the earlier Suit.
 - (ii) The averments in paragraph No.13 (page No.75) are also the averments in the three Suits (paragraph No.7, page No.91).
 - (iii) The prayers on page No.78.
- (b) The plaint in the new Suit on page No.82. The averments in paragraph No.4 onward in respect of transactions. The prayer clause on page No.99.
- (c) The application filed by the defendant No.4 in a new Suit as per the provisions of Section 10 of CPC (page No.134). It was filed on 21st March 2024.
- (d) The say filed by the plaintiff on page No.141 dated 21st March 2024.
- (e) The application for the withdrawal of the 2013 Suit filed by the plaintiffs therein is tendered. It is marked as page-145A if compilation.

- (f) The order passed below Exhibit No.61 dated 15th February 2024 thereby allowing the application of withdrawal. (It is on page No.30 of the compilation filed by respondents No.1 and 2)
- (g) Order below exhibit No.1 on 15th April 2024 9page No.147).

2. On this background he made following submission :-

- (a) On the basis of provisions of Order XXIII Rule 4(b) of the CPC fresh Suit is barred if earlier Suit is withdrawn without obtaining the leave of the Court.
- (b) This bar also comes within purview of “Suit barred by any law”.
- (c) According to him, even though fresh Suit was filed during the pendency of the first Suit, still this Court will have to observe that even the subsequent Suit comes within the bar under the provisions of Order XXIII Rule 4(b) of the CPC because Court will have to recognize the public policy.
- (d) According to him, various judgments were cited before the trial Court but the learned trial Judge has not made any comment about its applicability or non-applicability to the facts of this case.

3. Compilation filed by respondents is taken on record.

4. The respondents other than respondents No.1 and 2 have not appeared. Let applicant to take necessary steps.

5. Stand over to **14th January 2025** first on board for hearing arguments on the judgments and arguments for the respondents.

[S. M. MODAK, J.]