

Jvs.

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

WRIT PETITION NO. 1884 OF 2017

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
SALUNKE
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Mahadeo Daulata Dhaigude & Anr.	}	Petitioners
versus		
Tukaram Balwant Dhaigude & Ors.	}	Respondents

Mr. Sharad T. Bhosale i/b. Mr. Dilip
Bodake for petitioners.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 23, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 11th August 2016 passed by the Trial Court, by which the respondents/plaintiffs' have been permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the respondents/plaintiffs filed a suit seeking relief of declaration and permanent injunction. In the aforesaid civil suit, after the written statement was filed, the respondents/plaintiffs filed an application under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (CPC) seeking leave of the Court to withdraw the suit with liberty to file a fresh suit. The Trial Court, vide the impugned order dated 11th August 2016, has allowed the aforesaid application. Hence this petition.

3. Learned counsel for the petitioners submitted that the respondents cannot be permitted to withdraw the suit after the written statement has been filed by the petitioners. It is further submitted that the Trial Court ought to have appreciated that twice the respondents were granted liberty to amend the petition and therefore, the application under Order 23 Rule 1(3) could not have been allowed.

4. I have considered the submissions and perused the record.

5. The Trial Court, in the impugned order, has recorded a finding that on account of inadvertence of the counsel of the plaintiffs, the plaintiffs have made incomplete and wrong pleadings as also wrong prayers in the suit. Therefore, in the facts and circumstances of the case, the suit suffers from formal defect and therefore, power under Order 23 Rule 1(3) of CPC has been exercised on a sound principle of law.

6. The impugned order, therefore, does not suffers from any error apparent on the face of the record warranting interference of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

7. In the result, the writ petition fails and it is hereby dismissed.

(CHIEF JUSTICE)