



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.8/2026

Shri Jaiprakash Surendralal Jaiswal and others

...Versus...

Shri Dnyaneshwar Fattuji Dhopte and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. D.V. Chauhan, Senior Advocate a/b Mr. Rohan Chhabra, Advocate for applicants
Mr. K.S. Agrawal, Advocate for respondent No.1
Mr. S.P Gupta, Advocate for respondent No.2

CORAM : ROHIT W. JOSHI, J.

DATE : 22/04/2026

1. The applicants are the defendant Nos.1 to 10. The respondent No.1 is the original plaintiff and respondent No.2 is the original defendant No.11. The parties will be referred to as "plaintiff and defendants".

2. The plaintiff had filed a suit for specific performance of contract against the defendants being Special Civil Suit No.193/2024. It is not in dispute that prior to institution of the present suit, the plaintiff had instituted a suit prior in point of time, being Special Civil Suit No.1159/2022 for specific performance of the same contract. In the said civil suit, the plaintiff had moved an application vide Exhibit-29, seeking permission to withdraw the suit with liberty to file a fresh suit, if necessary. It is stated in the application at Exhibit-29 that after being served with the suit summons, the parties held a meeting, in which the defendants agreed to execute the sale deed in favour of the plaintiff on withdrawal of the suit.

The application for withdrawal of suit came to be allowed vide order dated 09/11/2022. The said order dated 09/11/2022 is a short order and since the fate of the present revision depends upon interpretation of the said order, the order is reproduced herein below :-

“Order below Exh. 1
(Passed on 19.11.2022)

1] Plaintiff alongwith his advocate present. They filed application at Exh.29 containing that plaintiff and defendant mutually settled their dispute out of court. Defendants have agreed to execute the sale deed in favour of the plaintiff on withdrawal of the suit. Therefore, the plaintiff wants to withdraw the suit.

2] Considering the withdrawal application (Exh.29). I satisfied for the same. Hence, I pass the following order -

Order

1] The suit is disposed of in view of withdrawal application (Exh.29).

2] Court fee be refunded to the plaintiff as per Rule.”

3. The prayer clauses, in the application at Exhibit-29 in the earlier suit, are also relevant and they read as under :-

“i) Allow the plaintiff to withdraw the present suit with a liberty to file fresh suit, if necessary.

ii) Refund the proportionate court fees in the interest of justice.”

4. In view of the aforesaid, the earlier civil suit being Special Civil Suit No.1159/2022 came to be disposed of as withdrawn.

5. As stated above, after withdrawal of the said suit, the plaintiff had filed the present suit being Special Civil Suit No.193/2024. The defendant Nos.1 to 10 filed an application vide Exhibit 33, seeking rejection of plaint under Order VII Rule 11 (a) (d) of the Code of Civil Procedure on the ground that the suit property is a *Zudpi* Jungle, alienation thereof is prohibited under the provisions of the Indian Forest Act, 1927.

6. A ground raised in the present revision that although reference to Order XXIII Rule 1 (3) (b) is not made in the application at Exhibit-33, during the course of hearing of the said application, the said contention was raised before the learned Trial Court. It is contended that since the contention is a pure legal question based on material on record, the learned Trial Court ought to have dealt with it. It is contended that the learned Trial Court has committed a serious error in not dealing with the said contention, which has caused serious prejudice to the defendant Nos.1 to 10.

7. It must be stated that the respondent No.2/defendant No.11 had also filed an application for rejection of plaint vide Exhibit-40 on the ground that the subsequent suit for specific performance was not maintainable, in view of Order II Rule 2 and Section 11 of the Code of Civil Procedure. The said application is also rejected by the learned Trial Court vide order dated 19/09/2025, on the ground that the said contentions cannot be entertained while dealing with application under Order VII Rule 11 of the Code of Civil Procedure. It must be stated that although said application at Exhibit-40 was not filed under Order XXIII Rule 1, contention with respect to the said provision was also raised by the

respondent No.11 during the course of hearing of the said application, which is rejected in paragraph 13 of the said order. The contention with respect to Order XXIII Rule 1, raised by the revision-petitioners is being considered on its merits by this Court, although reference to the said provision is not made in the application, on which the impugned order is passed, since both parties have advanced elaborate submissions with respect to the said provision.

8. Mr. D.V. Chauhan, the learned Senior Advocate for the applicants vehemently argues that the bar under Order XXIII Rule 1 (3) (b) of the Code of Civil Procedure goes to the root of the matter. He contends that the plaintiff cannot abuse process of law by filing repetitive suits for the same relief, particularly when the earlier Court has not granted permission to file a subsequent suit as is contemplated under the said provision. The learned Senior Advocate has placed strong reliance on the Division Bench judgment of the Himachal Pradesh High Court in the case of *Ominder Singh Vs. Ajay Dabra*, reported in *2024 SCC Online HP 3107*. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of *University of Agricultural Sciences Vs. Saroj Gupta*, reported in *(2021) 16 SCC 768*.

9. Apart from the above, the learned Senior Advocate argues that relief of specific performance cannot be granted in view of bar under Section 24 of the Indian Forest Act, 1927. It is argued that the land is admittedly recorded as *Zudpi* Jungle and unless the entry is deleted as per Section 2 of the Forest (Conservation Act), 1980, sale of the suit property will not be permissible. Reliance is placed on the

judgment of the Hon'ble Supreme Court in the case of *T.N. Godavarman Thirumulpad Vs. Union of India and others [I.A. No.12465/2019 and other connected applications in Writ Petition (C) No.202 of 1995, Decided on 22/05/2025]*.

10. The learned Advocate for the respondent No.1/plaintiff, however, contends that the application for withdrawal is allowed, “in view of the withdrawal application”. He contends that the words “in view of withdrawal application” in the order will have to be read alongside the prayer in the application for withdrawal. He then draws attention to the prayer clause and contends that the prayer for withdrawal was not unconditional, but with liberty to institute a fresh suit, if occasion arises.

11. Perusal of the order dated 09/11/2022, passed below Exhibit-1 in the earlier civil suit will demonstrate that the learned Trial Court referred to the application at Exhibit-29 and the version of the plaintiff that the subject matter of suit was mutually settled between the plaintiff and the defendants in the said suit, by virtue of out of Court settlement. The learned Trial Court has recorded that the plaintiff wanted to withdraw the suit, in view of the said agreement/ understanding.

12. In view of the aforesaid observations in paragraph No.1, the learned Trial Court has permitted withdrawal of the suit, “in view of withdrawal of application/Exhibit 29”. Thus, the suit is disposed of in view of the withdrawal of application at Exhibit 29. The Application for withdrawal is not one for unconditional withdrawal but with liberty to institute fresh suit, if necessary.

13. In the considered opinion of this Court, the order below Exhibit-1 which is passed in the light of application at Exhibit-29 will have to be read in conjunction with the application at Exhibit-29 and not in isolation, as is sought to be done by the revision-petitioners.

14. In the case of *Omindar Singh* (supra), the earlier suit for specific performance was withdrawn unconditionally. The contention was raised that the permission to institute fresh suit was implied in the order. The High Court has held that the permission must be express. The ratio of the said decision cannot be made applicable to the said case. Whereas there cannot be any dispute with the proposition that unless permission to institute fresh suit for the same cause is granted, institution of fresh suit will be barred. However, it appears from the reading of the order that the learned Trial Court has consciously disposed of the suit in the light of the application under Exhibit-29, in which the prayer was to grant permission to withdraw the suit with liberty to institute fresh suit, if needed. In the present case, the permission to withdraw the suit was not by way of unconditional withdrawal.

15. In view of the interpretation of the order dated 09/11/2022, passed in the earlier civil suit, the judgment in the case of *University of Agricultural Sciences* (supra) will also not help the revision-petitioners, although ratio of the said judgment cannot be disputed.

16. The contention that the suit is barred in view of Order XXIII Rule 1 (3) (b) of the Code of Civil Procedure is, therefore, liable to be rejected.

17. As regards the second contention, Section 24 of the Indian Forest Act, 1927 does not create absolute embargo on alienation of forest land. Transfer of forest land is permissible, subject to sanction by State Government. In the case of *T.N. Godavarman Thirumulpad* (supra) as well, the Hon'ble Supreme Court has stated that alienation of *Zudpi* Jungle land will not be permissible in the absence of prior permission from the State Government as per Section 2 of the Forest (Conservation) Act, 1980. It is now well settled that in cases where right to alienate the suit property is not absolute, but subject to certain permissions/sanction, the Civil Court is competent to pass an unconditional decree.

18. In view of the aforesaid, in the considered opinion of this Court, the fact that the land the suit land is recorded as a *Zudpi* Jungle cannot be a ground for rejection of plaint.

19. These are the only two contentions, which are pressed into service during the course of hearing of the revision application. Both contentions are rejected in the light of the reasons recorded above.

20. Civil revision application is, therefore, rejected. No order as to costs.

(ROHIT W. JOSHI, J.)