

MHKO010000061989



COMMON ORDER BELOW EXH.1 IN REG. CIVIL APPEAL NO.
220/2009

1. Read application. Respondents have not filed say to this application.
2. Appellants filed the application Exh. 81 and prayed to delete names of respondent Nos. 5, 7,10,12,14(a),14(f),16,18, as they are dead. Further appellants prayed to delete names of respondent Nos. 6(d),6(f),14(c) for want of their proper addresses. Appellants further prayed to delete name of respondent No. 14(b),14(d),14(e) and 15(d) as they do not desire to seek any relief against her. Application Exh. 81 is allowed. In view of order passed below Exh.81 following order is passed.

ORDER.

Appeal is disposed of against respondent Nos. 5, 7, 10,12,14(a),14(f),16,18,6(d),6(f),14(c),14(b),14(d),14(e) and 15(d) as appellants unconditionally withdrawn the appeal against them .

Kolhapur.

Date :14-10-2019

(Mahesh Krishnaji Jadhav)
District Judge-3, Kolhapur.

ORDER

Appeal stands dismissed against respondent Nos. 5,7,10,12,14(a),14(f),16,18, 6(d),6(f),14(c) and 15(d)

This is an application under Order 23 Rule 1 of Civil Procedure Code . for withdrawal of appeal with permission to file fresh suit. Heard learned advocate Shri. Mane appearing for appellants and learned advocate Shri. S.B. Patil for respondent No.1.

2. Perused record. Advocate Shri. S.B. Patil for respondent No. 1 submitted ' No objection' to allow the application. Advocate Shri. Mane submitted that appellant is the owner of the plot (parade) which was not given separate survey number. There was dispute arose in concern with the title of the plaintiff over that unsurvey numbered property. Appellant/ plaintiff desires to seek necessary relief against the Revenue Authority, therefore, they desire to withdraw the suit with permission to file fresh suit.

3. On perusal of record it appears that in Reg.C.S.No. 132/2010 plaintiff sought relief of declaration of ownership and for perpetual injunction in respect of 11 R land which was more particularly described in para No. 1 of the plaint. In the said suit learned lower court held that there was collusion in between plaintiff and defendant No. 1. The suit is not within limitation and therefore, dismissed the suit, against which present appeal

has been preferred. Now plaintiff desires to withdraw the suit and to file fresh suit in respect of unnumbered plot (parade) which was situated adjacent to the suit property. Said unnumbered plot is not the subject matter of the suit nor any relief was sought in respect of that plot in earlier suit by the plaintiff. As per Order 23 Rule 3 the appellant/ plaintiff must show to the satisfaction of the Court that suit must fail by reason of some formal defect or that there are some other sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter, but failure or the inability of the plaintiff to secure necessary evidence to support his case is not a ground contemplated by Order 23 Rule 1 of Civil Procedure Code. It is not the object of the rule to enable the plaintiff who has failed to prove his case to re-agitate the matter. Plaintiff/appellant is not allowed to withdraw the suit for filling up the lacuna left in the earlier suit. Thus, for the reasons mentioned above, appellant/plaintiff failed to prove sufficient reasons and formal defect. Thus, permission cannot be given to withdraw the suit with condition to file fresh suit. Further merely because other party has given 'no objection' is not a ground to allow the application wherein plaintiff desires to fill up lacuna and failed to show sufficient cause. Hence application deserves to be rejected. In the result following order is passed.

ORDER.

Application stands rejected.

Kolhapur.

Date :14-10-2019

(Mahesh Krishnaji Jadhav)
District Judge-3, Kolhapur.