

MHKO110012432016



Regular Civil Suit No. 206/2016.
CNR No. MHKO110012432016

Order Below Exh.94.

01. Plaintiffs made the present application with the prayer to permit them to withdraw the suit.

02. It is further contentions of the plaintiffs that, defendant no.1, in the present suit instituted a Reg. civil suit bearing no.163/2015, against plaintiffs, defendants no.2, defendant no.3 and defendant no.4 to the present suit. They further submitted that, defendants no.1 instituted the Reg. Civil suit bearing no.163/2015, for seeking the relief of partition and perpetual injunction. They further submitted that, the Gat no.516 and 517, which is the subject matter of the present suit were also the subject matter of the suit i.e. Reg. Civil Suit no.163/2015. Plaintiffs of the suit bearing no.163/2015, i.e. defendant no.1 to the present suit, claimed that, the suit properties are ancestor properties. Present plaintiffs file their written statement in that suit i.e. Reg. Civil Suit no.163/2015, submitting that, suit properties are their self acquired properties. Plaintiffs finally submitted that, defendant no.1 to the present suit instituted the suit bearing 163/2015, against them, i.e. plaintiffs prior to institution of the present suit. So, to avoid the multiplicity of the suit, he seeking permission to withdraw the present suit.

03. Defendant no.1 filed his say at **Exh.96**, submitting that, the contents of instant application are false and misleading one. Plaintiffs made the instant

application with the ulterior motive and to harass defendants. He further submitted that, since beginning plaintiffs well aware that, they instituted a false and frivolous suit only to harass defendants. Now, plaintiffs sure that, they will not get success in the suit, hence they made this application. They further submitted that, plaintiffs made an application vide **Exh.05**, for seeking interim injunction relief and defendant filed application vide **Exh.33**, for seeking the same relief. The order passed below both these application were set aside by the Hon'ble District Judge, Kolhapur. They further submitted that, in the present suit there is interim injunction against present plaintiffs which is granted by Hon'ble District Court, Kolhapur in M.C.A. No.16/2019 and 22/2019. Only with the ill-intention to give the by pass to the said interim order, plaintiffs, they made the instant application, which is not tenable. He further submitted that, in their pleading plaintiffs made so many admission regarding the nature of the suit property. So, to give the by pass to the said admission now plaintiffs intended to withdraw the suit.

04. He further submitted that, hence before plaintiffs made an application vide **Exh.82**, with the same prayer and same was rejected by this court on 21/07/2022. So, plaintiffs is not entitled to make the present application with the same prayer which was already rejected. He also further submitted that, one writ petition is pending before Hon'ble Bombay High Court, which filed to challenge the order passed by this Court vide **Exh.55** and **Exh.56**. In such situation plaintiffs shall not be permitted to withdraw the suit. He finally submitted that, plaintiffs instituted the present suit inspite of the having knowledge that, already a suit i.e. Reg. Civil Suit no.163/2015, was instituted and they are also party defendants to the present suit. Hence, now plaintiffs shall not permitted to claim that, the dispute involved in the present suit shall be solve in

the suit i.e. Reg. Civil Suit. 163/2015. He finally submitted to reject the present application.

05. Perused the application. Say there on. Heard both the parties.

06. It is basic argument of the plaintiffs that, defendant no.1 to the present suit instituted a Reg. Civil Suit bearing no.163/2015, prior to institution to the present suit in question. They further submitted that, suit properties of the present suit and suit bearing no. Reg. Civil Suit no.163/2015, are also same. So, the present plaintiffs will get the remedy for which they are seeking in the present suit, in the suit i.e. Reg. Civil Suit no.163/2015. Hence, they want to withdraw the present suit.

07. It is necessary to consider here that, prior to this application plaintiffs made an application vide **Exh.82**, for the same relief and same was rejected by this Court. It is also evident from the record that, Hon'ble District Court, Kolhapur has granted interim injunction against plaintiffs, which is enforce. On the other hand, there is also pending a writ petition before the Hon'ble Bombay High Court which was filed to challenge the order passed by this Court on application vide **Exh.55** and **Exh.56**. In such situation, I am of the candid opinion that, during the pendency of writ petition before the Hon'ble Bombay High Court, it will be not in the interest of justice to permit the plaintiffs to withdraw the suit. On the other hand, plaintiffs did not put forth any cogent reason for withdrawing the suit. If it is submission of the plaintiffs that, the subject matter of the suit i.e. Reg. Civil Suit no.163/2015 and present suit is one and the same and he will get the remedy in the present suit which is seeking for in the suit bearing no. Reg. Civil Suit no.163/2015, in such situation, plaintiffs are at

library to club the both the suits together, to dispose off the same by one common judgment. So, considering the submission of the plaintiffs, I am of the opinion that, application is divert form merit. Hence, I proceed to pass the following order.

ORDER

1. Application vide **Exh.94** is hereby rejected.
2. Application vide **Exh.94** is disposed off accordingly.

Sd/-

(L. M. Pathan)

Civil Judge Junior Division,
Peth-Vadgaon.

Date : 29/11/2023.