

MHAH220006942020



R.C.S.No.109/2020

Ashruji Tukaram and Ors.

Vs.

Dattatray Vetala Hulge and Ors.

COMMON ORDER BELOW EXH.1 AND 50

(Passed on 28th day of January 2026)

On 27/10/2025, plaintiff No. 1 to 5 and their Ld. Advocate are present before the Court when called out. Plaintiff No. 1 to 5 filed withdrawal pursis below Exh. 50 dated 27/10/2025 and submitted that plaintiffs wants to withdraw the suit.

2. Ld. Advocate of defendants Mr. S. M. Gunjal filed his say below Exh. 51 to the pursis wherein he mentioned that the pursis is not proper and legal one. Plaintiffs have not filed affidavit in support of application. They cannot withdraw the suit without application. Plaintiffs cannot withdraw the suit without the leave of the Court. Plaintiffs filed withdrawal pursis. Plaintiffs had filed a suit R.C.S. No. 329/2025 in respect of same property against the defendants for same prayer before Hon'ble Civil Judge, Senior Division Court, Karjat without disclosing the pendency of the present suit and intentionally suppressed the material fact from the Court and filed an application to obtain the interim relief against the defendants therein. Ld. Advocate for the defendants further submitted that plaintiffs have not mentioned reason or causes for withdrawing the suit.

3. Ld. Advocate for the defendants further submitted that there is no compliance of Order XXIII, Rule 3 of Code of Civil Procedure, 1908. Defendants have filed their written

statement and facing trial too. Hence, he submitted strong objection.

4. Heard Ld. Advocate Mr. S. J. Wakade for the plaintiffs. He submitted that the plaintiffs have filed the withdrawal pursis cum application in view of Order XXIII, Rule 1 of the Code of Civil Procedure, 1908 for unconditional withdrawal of the suit. Plaintiffs herein do not want to proceed with the suit. Therefore, Ld. Advocate prayed for permission to withdraw the present suit unconditionally.

5. Ld. Advocate Mr. S. M. Gunjal for the defendants submitted that plaintiffs have not filed affidavit along with the withdrawal pursis. Defendants appeared and filed their written statement. There is similar suit pending before Hon'ble Civil Judge, Senior Division, Karjat bearing R.C.S. No. 329/2025 filed by the plaintiffs herein. Plaintiffs have not disclosed the pendency of that suit in the withdrawal pursis. Plaintiffs cannot withdraw the suit. Ld. Advocate invited my attention to the provision of Order XXIII, Rule 3 and 4 and submitted that plaintiffs are liable to pay costs for withdrawing the suit. He further submitted that there is no reason mentioned by the plaintiffs for withdrawing the suit. Therefore, plaintiffs subsequent suit R.C.S. No. 329/2025 is barred in view of the provisions of Order XXIII, Rule 3 and 4. In support of his argument he relied upon the following case laws.

i. Sayyed Noor S/o Sayyed Burhan Vs. Sayyed Minya S/o Sayyed Burhan in Civil Revision Application No. 150/2014 of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad.

ii. V. Rajendran and Anr. Vs. Annasamy Pandian (D) Thr. Lrs.

Karthyayani Natchiar in Civil Appeal No. 861/2017 of Hon'ble Supreme Court of India.

iii. Sri. Thimma Reddy S/o Venkatappa Reddy Vs. Chandrashekara Reddy and Ors. in Regular First Appeal No. 2159/2012 of Hon'ble High Court of Karnataka at Bengaluru.

6. This is suit filed by plaintiffs for perpetual injunction against the defendants No. 1 to 11. Suit is filed in the year 2020. Defendant No. 1 to 10 appeared. Defendant No. 1, 5, 7 to 9 filed written statement below Exh.33 and prayed for dismissal of the suit. Thereafter, the suit was pending for hearing of temporary injunction application below Exh. 5. Thereafter, the plaintiffs have filed withdrawal pursis cum application below Exh. 50.

7. Order XXIII, Rule 1 provides that

"1. Withdrawal of suit or abandonment of part of claim.—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),
he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”*

8. Hon'ble Bombay High Court observed in the case of **Sayyed Noor S/o Sayyed Burhan Vs. Sayyed Minya S/o Sayyed Burhan** that earlier suit had been withdrawn unconditionally. Therefore, subsequent suit is not maintainable in respect of same subject matter.

9. Hon'ble Supreme Court observed in the case of **V. Rajendran and Anr. Vs. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar** that appellant filed the application for withdrawal of the suit in terms of Order XXIII, Rule 1(3) of Code of Civil Procedure, 1908. The view taken by the Trial Court that the suit suffered from a formal defect to allow the appellant to

withdraw the suit with permission of institute fresh suit is correct one. The costs imposed on the appellant is enhanced from Rs. 3,000/- to 10,000/-.

10. Hon'ble High Court of Karnataka at Bengaluru observed in the case of **Sri. Thimma Reddy S/o Venkatappa Reddy Vs. Chandrashekara Reddy and Ors.** that effect of withdrawal of the suit on subsequent suit filed by the plaintiff is discussed. It is further observed that Order XXIII, Rule 1(4) of the Code of Civil Procedure, 1908 operates as a barred to the plaintiffs to subsequent suit.

11. On perusal of pursis cum application below Exh. 50, it seems that plaintiffs stated therein that plaintiffs do not want to proceed with the suit against the defendants. Plaintiffs further prayed for disposing of the suit. Plaintiff No. 1 to 5 personally present. The pursis cum application is verified from the plaintiffs in presence of their Ld. Advocate Mr. S. J. Wakade. Ld. Advocate for the plaintiffs also identified the plaintiff No. 1 to 5. Therefore, from the application Exh. 50, it seems that plaintiffs do not want to proceed with the suit. Exh. 50 is pursis cum application. Plaintiffs want to withdraw the suit unconditionally. It further seems that plaintiffs did not pray for withdrawal of the suit in view of Order XXIII, Rule 1(3). It is plain and unconditional withdrawal of the suit. Plaintiffs have every right to withdraw the suit unconditionally. Ld. Advocate for the defendants submitted that R.C.S. No. 329/2025 is pending before Hon'ble Civil Judge, Senior Division, Karjat in respect of the same subject matter and same parties. However, pendency of such a suit cannot preclude the plaintiffs from withdrawing their present suit in this Court. Plaintiffs are not interested to proceed with the suit. Therefore, facts and circumstances of the case laws are different. These

case laws collectively discussed the effect of withdrawal of the suit. However, by filing the present suit defendants constrained to appear and file their written statement. Suit is pending since 2020. Therefore, costs should be imposed upon the plaintiffs. Therefore, I pass following order:

ORDER

1. Suit is disposed of as withdrawn unconditionally in view of pursis Exh. 50.
2. Pursis Exh. 50 be kept with Exh.1.
3. Plaintiff shall pay costs of Rs. 5,000/- (Rs. Five Thousand Only) to the contesting defendants.

Date : 28/01/2026.

(R. B. Raut)
2nd Jt. Civil Judge, Junior Division,
Karjat, Dist. Ahmednagar