

KABG040022762018



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 8TH DAY OF JUNE-2026

O.S.NO.1056/2018

PLAINTIFF :

1)	Shri. Baburao S/o. Basappa Onarotti.
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Vs.

DEFENDANT :

1)	Shri. Mallappa S/o. Babu Hamannavar.
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PARTIES TO I.A.NO.IV

Applicant/Plaintiff :

Shri.	Baburao S/o. Basappa Onarotti.
	(By Shri.A. C. Hanaminahal, Adv.)

Vs.

Opponent/Defendant :

Kav	Shri. Mallappa S/o. Babu Hamannavar.
	(By Shri. S. Y. Jodagunde, Adv.)

1.	Provision under which application is filed	U/O.XXIII Rule of C.P.C.
2.	Relief sought for	Withdraw suit
3.	The date on which the application is filed	05.01.2026
4.	Number of application	IV
5.	The date on which the objections are filed by different opponent	22.01.2026
6.	The date on which the orders were passed on the said application.	08.06.2026

ORDER ON I.A.NO.IV

The counsel for plaintiff has filed application U/O.XXIII Rule 1 of C.P.C. seeking withdrawal of suit with permission to file fresh suit on the same cause of action before Hon'ble Senior Civil Judge, Belagavi.

2. In the affidavit annexed to the application, the applicant/ plaintiff has stated that the present suit is filed by plaintiff for the relief of declaration and mandatory injunction against the defendant and when case stood posted for plaintiff evidence, the plaintiff thought of withdrawing this suit for filing fresh suit on same cause of action for claiming more damages against defendant for loss caused to the plaintiff's residential house. That the residential premises of plaintiff i.e., the house of plaintiff collapsed and fell down due to the rash and negligent act of the defendant in constructing his house as the defendant started constructing the first floor of his building by colluding with the officials of City Corporation, Belagavi without taking proper measures. It is further stated that the plaintiff has already produced photographs showing the fully damaged house of the plaintiff and regarding the tiles of the roof of the house of plaintiff having been broken due to the negligent act of defendant. That the plaintiff is now intending to file fresh suit before Hon'ble Senior Civil Judge, Belagavi for claiming enhanced compensation /damages and on these grounds, the plaintiff has sought the permission of this Court to withdraw the suit with liberty to file fresh suit on same cause of action.

3. Per contra, the defendant has filed objection to the said application on the ground that the allegations made in the affidavit

annexed to the application are all false and the present application is not maintainable in the eye of law. That the very suit of plaintiff is defective and the valuation made by plaintiff U/Sec.24(b) and 26(c) of K.C.F. and S.V. Act for the relief of mandatory injunction is not tenable since the main relief is damages to the tune of Rs.5,00,000/- and hence the valuation ought to be made U/Sec.21 of the aforesaid Act. On these grounds, the defendant has prayed to dismiss the present suit with costs.

4. Perused the application and objection.
5. Heard arguments of both counsel.
6. The following points arise for consideration :

POINTS

- i) *Whether the applicant/plaintiff has made out sufficient grounds to allow the I.A. No.IV ?*
- ii) *What order ?*

7. My findings to the above points are as follows :

Point No.1 : In the Negative,

**Point No.2 : As per final order
for the following :**

REASONS

8. Point No.1 : The present suit is filed by the plaintiff seeking the relief of declaration and mandatory injunction against the defendant. The plaintiff has sought to declare that he is entitled to compensation of Rs.5,00,000/- towards damage caused by the illegal construction undertaken by the defendant and by the negligent act of defendant and for mandatory injunction to direct the defendant to pay the said compensation amount. The suit is filed in the year 2018 with cause of action narrated in Para-IV of the plaint as on 20.07.2018 when plaintiff issued objection to the City Corporation, Belagavi to intervene in the matter and to resolve the matter and the cause of action is said to have continued when the plaintiff issued legal notice to defendant on 26.07.2018 and when the defendant issued reply on 31.07.2018. On filing the present suit and on service of summons, the defendant appeared before the Court and filed his written statement and accordingly issues were framed in the suit and the case stood posted for plaintiff evidence on 06.08.2025. But, when the case stood posted for plaintiff evidence, on 05.01.2026, the plaintiff filed the present application seeking permission to withdraw the suit with liberty to file fresh suit on the same cause of action. It is pertinent to note here that the present suit is one for the relief of declaration and mandatory injunction with the cause of action stated above which is said to have arisen in the year

2018 itself and now the plaintiff is seeking permission to withdraw the suit by reserving liberty to file fresh suit on the very same cause of action. The reasons stated in the application by the plaintiff for withdraw of suit is that in view of the collapsing of his house completely and in view of the need for the plaintiff to seek more compensation in the form of damages from the defendant, the plaintiff is intending to file fresh suit on the same cause of action before the competent Court i.e., the Senior Division Court, Belagavi.

9. However, it is pertinent to note that the provisions of Order XXIII Rule 1(3) C.P.C. provide that where the Court is satisfied that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a 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 subject matter of such suit or such part of the claim. At the same time, Order XXIII Rule 2 C.P.C. also makes it clear that in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. Hence, it is clear that the subsequent suit if any that would be filed by the plaintiff will be

subject to law of limitation and in such case, the plaintiff cannot file fresh suit on the very same cause of action since it would be barred by limitation. Moreover, the plaintiff has not made out any formal defect in the suit in order to permit him to withdraw the suit. If at all the plaintiff is intending to seek more compensation than already stated in the plaint, then he could have got amended the plaint to that effect and in the event the said relief or the claim for enhanced compensation would appear to be beyond the pecuniary jurisdiction of this Court, then the plaintiff would have the option to invoke the provisions of Order VII Rule 10 of C.P.C. in order to get the plaint in return in order to file the same before Court having competent jurisdiction. But, the plaintiff has not done so. Instead, the plaintiff has sought permission of this Court to withdraw the suit with liberty to file fresh suit, which cannot be permitted by this Court.

10. The aforesaid provisions of Order XXIII Rule 1(3) C.P.C. also make it evident that where the Court is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit, it will then allow him to withdraw the suit necessarily reserving the right to plaintiff to file a fresh suit in respect of the subject matter of the suit or part thereof and not otherwise. Therefore, since there is no formal defect in the suit and as the plaintiff cannot maintain

another suit on the same cause of action, he cannot be permitted to withdraw the suit with leave to file fresh suit on same cause of action. As such, the plaintiff has not made out grounds to allow the present application and I answer **Point No.1 in the Negative.**

11. Point No.2 : For the aforesaid reasons, I proceed to pass the following :

ORDER

***The application i.e., I.A.No.IV filed
by plaintiff U/O.XXIII Rule 1 of C.P.C. is
hereby rejected.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 8th day of June-2026.)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.**