

31-07-2026:

ORDER ON IA NO.5

The plaintiff has filed the present application under Order XXIII Rule 1 (3) (b) of CPC seeking permission to withdraw the present suit with liberty to institute a fresh suit on the same cause of action.

The affidavit filed in support of the application discloses that the plaintiff has instituted the present suit for partition and separate possession of the suit properties against the defendants. It is stated that during the pendency of the suit, the plaint has undergone several amendments. According to the plaintiff, despite such amendments, certain further amendments are still necessary. It is further stated that on account of repeated amendments, the pleadings have become inconsistent and confusing and that the particulars relating to the defendants, including their serial numbers and descriptions, are no longer accurate. The plaintiff contend that unless a fresh suit is instituted incorporating all the necessary corrections and proper particulars, effective adjudication of the dispute may not be possible. Hence, the plaintiff has sought

permission to withdraw the present suit with liberty to institute a fresh suit on the same cause of action.

The learned counsel appearing for defendant No.1 has submitted that he has no objection for allowing the application. Though sufficient opportunities were granted, remaining defendants have neither filed objections nor seriously opposed the application. Accordingly, their objections are taken as not filed.

Heard the learned counsel for the plaintiff perused the application, affidavit and the material available on record.

The following point arises for consideration:

“Whether the plaintiff has made out sufficient grounds under order XXIII Rule 1(3) of CPC to withdraw the present suit with liberty to institute a fresh suit on the same cause of action. ?”

My finding on the above point is in the Affirmative for the following:

REASONS

Order XXIII Rule 1(3) of CPC empowers the Court to permit withdrawal of a suit with liberty to

institute a fresh suit where the Court is satisfied either that the suit must fail by reasons of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit.

In the present case, the plaintiff has specifically stated that the plaint has undergone several amendments during the pendency of the proceedings and that, notwithstanding, those amendments, further amendments are still required. It is further stated that because of repeated amendments, inconsistencies have crept into the pleadings and the particulars relating to the defendants, including their serial numbers and descriptions, have become inaccurate. Such defects are allowed to remain, or likely to create confusion in adjudication and may ultimately affect the proper determination of the rights of the parties.

In view of the above contention of the plaintiff if gone through the very provisions of the CPC, the expression "formal defect" occurring under Order XXIII Rule 1 (3) (a) of CPC has received a liberal interpretation by the Courts. A defect relating to pleadings, descriptions of

parties, in correct particulars or other procedural infirmities, which do not touch the merits of the controversy but may impede effective adjudication, cannot be regarded as a formal defect. The object of the provision is to avoid multiplicity of proceedings and to ensure that disputes are adjudicated on their merits rather than being defeated on technical grounds in the case on hand, the plaintiff has satisfactorily explained the reasons for seeking withdrawal of the suit. The defects pointed out relate to the pleadings and particulars of the parties. Therefore, this Court is satisfied that the plaintiff has shown sufficient grounds within the meaning of order XXIII Rule 1(3) of CPC for seeking permission to withdraw the present suit with liberty to institute a fresh suit. It is also relevant to note that defendant No.1 has not raised any objection to the application. Remaining defendants, despite sufficient opportunities, have not chosen, to file their objections. Therefore, no material is placed before the Court by the defendants to indicate that the application has been filed with any mala fide intention or that irreparable prejudice would be caused to the defendants if the liberty sought is granted. Furthermore, granting liberty under Order XXIII

Rule 1(3) of CPC does not amount to expressing any opinion on the merits of the case. Any fresh suit instituted by the plaintiff shall be considered independently in accordance with law, and all legal and factual defences available to the defendants, including limitation and maintainability, shall remain open for consideration.

From the foregoing reasons, this Court is satisfied that the plaintiff has established sufficient grounds to withdrawal the present suit with liberty to institute a fresh suit on the same cause of action. Hence, point for consideration is answered in the Affirmative. So, I proceed to pass the following:

ORDER

IA No.5 filed by the plaintiff under Order XXIII Rule 1(3) (b) of CPC is allowed.

The plaintiff is permitted to withdraw O.S. No.29/2019 with liberty to institute a fresh suit on the same cause of action, subject to the law of limitation and all other legal objections that may be available to the

defendants.

Accordingly, the suit stands dismissed as withdrawn with liberty as stated above.

No order as to costs.

Senior Civil Judge, Bailhongal.