

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
J.M.F.C., AT DEVANAHALLI**

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 24th Day of March, 2022

O.S.No.744/2007

1. Sri. T.R. Rakesh and Another : **Plaintiffs**

(By Sri. S.R. Kavitha /
A.R. Sreenivas
Reddy, Advocate)

V/s.

1. Sri. T.K. Ramanjinappa and Others : **Defendants**

(D1 - By Sri. J. Mohan
Raju, Advocate)
(D2 - By Sri. D.
Narasimha Murthy,
Advocate)
(D3 - By Sri.
Umesh .Y / K.D.
Puttaswamy,
Advocate)

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**ORDERS ON I.A.No.9**

The plaintiffs have filed I.A.No.9 under Order 23 Rule 1(3) and they seek to withdraw the suit with liberty to file a fresh suit on the same cause of action due to the reasons of **formal defects** in the present suit.

2. In support of I.A.No.9, the plaintiff No.1 files his affidavit for himself and for plaintiff No.2 and he deposes on oath that, they have filed suit for partition against the defendants. On the date of filing of the suit, the plaintiffs were not acquainted with the details of illegal acts committed by the defendants and with due diligence the plaintiffs are prosecuting their case. Recently, the plaintiffs have obtained documents produced by the defendant No.3 on 16.07.2019 and the plaintiffs came to know that, due to misconception, they did not include two more properties in this suit and also they were not able to disclose all the happenings took place in their family. The plaintiffs have filed an application for amendment of plaint, but, the said application has been rejected. Now, the case is set down for cross-examination of DW.1 and therefore, the plaintiffs are seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action for the reason of formal defect i.e., non-inclusion of two more properties and not disclosing all the happenings took place in their family.

3. The defendant No.3 has filed objections to the I.A.No.9. The main objections raised by the defendant No.3 are that, the above suit was filed in the year 2007 and now the case is posted for cross-examination of DW.1. In spite of conducting cross-examination of the DW.1, the plaintiffs have filed the above application only to enlarge the subject matter of the suit after continuous fighting for 14 years. The plaintiffs have filed I.A.No.8 for amendment of plaint to include the formal defects i.e., inclusion of Item No.5 and 6 and for narration of certain facts. This Court has dismissed the

I.A.No.8 filed by the plaintiffs seeking amendment on 16.09.2020 and the plaintiffs have filed **W.P.No.3036/2021** before the Hon'ble High Court of Karnataka and in the said Writ Petition, the dismissal of I.A.No.8 by this Court was confirmed by the Hon'ble High Court of Karnataka by its Order dated 23.02.2021. Therefore, there are no grounds for allowing the withdrawal of suit with liberty to file fresh suit on the same cause of action for the reason of formal defects. Therefore, the defendant No.3 has prayed for dismissal of I.A.No.9.

4. The plaintiffs have filed written arguments and they have relied on the Judgment reported in: **(2017) 5 SCC 63** in between **V. Rajendran V/s. Annasamy Pandian**. The defendant No.3 has addressed oral arguments and he relied on the Judgment of the Hon'ble High Court of Karnataka in W.P.No.3036/2021 passed on I.A.No.8.

5. The Points that arise for consideration are as follows:

### **POINTS**

**1. Whether the plaintiffs are entitled for withdrawal of suit with liberty to file fresh suit for the reason of formal defects?**

**2. What Order?**

6. The Court answer the above points as follows:

**Point No.1 : In the Negative**

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

### **REASONS**

7. **Point No.1:-** The plaintiffs have filed the above suit in the year 2007 and they have filed I.A.No.8 for amendment of plaint by seeking addition of Para No.5A running one and half pages and also to include Item No.5(1) and Item No.6 in the suit. The then Presiding Officer has dismissed the I.A.No.8 of the plaintiffs seeking amendment by his Order dated 16.09.2020. Against the said Order of dismissal of I.A.No.8, the plaintiffs have filed **W.P.No.3036/2021** which also came to be dismissed by confirming the Order of this Court passed on I.A.No.8.

8. The plaintiffs have narrated in their affidavit that, due to some mistake they could not have stated the facts and they could not have impleaded two more properties and their application for amendment is rejected by the Court. The plaintiffs are contending that, non-pleading of certain facts and non-inclusion of two more properties is the formal defect. But, their application for amendment to include those pleadings and two more properties is dismissed by this Court and Order of dismissal has attained finality by the Order of the Hon'ble High Court of Karnataka in W.P.No.3036/2021 dated 23.02.2021. Now, the plaintiffs are trying to withdraw the suit after 14 years from filing it and they are seeking to include the pleadings which are already refused by the Hon'ble High Court of Karnataka in W.P.No.3036/2021. In the the Judgment relied by the plaintiffs which is reported in: **(2017) 5 SCC 63** in between **V. Rajendran V/s. Annasamy Pandian** the Hon'ble Apex Court has held that, **when an application is filed under Order 23 Rule 1(3) of C.P.C., the Court must**

**be satisfied about formal defect or sufficient grounds.**

In the present case, the plaintiffs have already tried to include the pleadings and properties by way of amendment of plaint but, their application was refused by this Court as not maintainable and the said Order was also upheld by the Hon'ble High Court of Karnataka. When such being the case, the said refusal prevents the plaintiffs seeking insertion of those pleadings and properties in this suit by filing a fresh suit reserving liberty to them. Therefore, even if a fresh suit is filed, the Court cannot permit those pleadings which were refused under I.A.No.8 by the Hon'ble High Court of Karnataka. Therefore, the plaintiffs have failed to show that, they are entitled for withdrawing the above suit to file fresh suit for the reason of formal defects. Hence, the **Point No.1 is answered in the Negative.**

9. **Point No.2:-** For the discussion made on the above Point, the Court proceeds to pass the following:

**ORDER**

**The I.A.No.9 filed by the plaintiffs under Order 23 Rule 1 read with Section 151 of C.P.C. is hereby dismissed.**

Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 24<sup>th</sup> day of March, 2022).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**