

In the Court of Aishwarya Srivastava Additional Civil Judge (junior Division) Dhanbad

O.S No. 356/2020

Order

Date: 18.06.2026

Record is put up today.

On perusal it transpires that the case is fixed for the order on the petition dated 22.11.2025 filed by the plaintiffs under Order XXIII rule (3) of the CPC praying for withdrawing the suit .

Ld. Counsel on the behalf of the plaintiff has submitted that plaintiffs have filed the instant suit for declaration of right, title and interest over the suit property and for confirmation of his possession over the suit and further declaration that the Rs Khatiyani no. 21 of Mouza Duatand has been wrongly prepared in the name of defendant. It has been submitted that prior to filing this suit the original defendant Kailash Singh filed a Title Suit No. 48/1994 against the plaintiff as well as State of Bihar (now Jharkhand) and others in the Court of Addl. Munsif Dhanbad, for the suit land who after hearing the parties dismissed the said suit by the Judgement dated 26.9.2007. and being aggrieved and dissatisfied of the said judgement the defendant preferred a Title Appeal no. 149/2007 which was too dismissed on 15.9.2015 by the Court of Principal District Judge, Dhanbad. Against the said judgement the defendant preferred Second Appeal No. 5/2016 and during the pendency appellant Kailash Singh died and his heirs have been substituted in said appeal. After hearing the Second Appeal No. 5/2016 was dismissed through order dated 5.5.2025. it has been submitted that the subject matter were same between the parties. And now under the circumstances the plaintiff does not intend to proceed to this suit and wish to withdraw it with liberty to institute a fresh suit in respect of the suit land on arising a cause of action afresh It has been submitted by the plaintiff that there is no impediment in withdrawing the present suit because the plaintiff does not intend to continue the suit. Hence prayed for allowing the petition and permit him to withdraw the present suit with a liberty to institute a fresh suit in respect of suit property on arising of fresh cause of action.

The copy was served to the opposite party and they submitted that do not have any objection if the suit is withdrawn without any liberty to file fresh suit.

Heard and perused the record.

Order XXIII rule 1 provides that:

“ 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..”

Rule (3) provides that where the Court is satisfied – (a) that a suit must fail by reason of some formal defect, or or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of the 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 part of claim.

Rule (4) provides that where the plaintiff -(a) abandons any suit or part of a claim or, (b) withdraws from the suit or part of a claim without the permission.. 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.

In the present case, the plaintiff has filed for permission to withdraw the present suit with permission to institute fresh suit if any fresh cause of action arises on the ground that in a similar suit filed between plaintiff and defendant relating to similar cause of action filed prior to instant suit has been

decided and confirmed in Second Appeal No. 5/2016. and hence the plaintiff intends to withdraw the present suit. The plaintiff has also endorsed in the order sheet that he do not wants to proceed in this case and that he wants to withdraw the same. In the present suit the plaintiff has prayed for the liberty to institute fresh suit on arising of fresh cause of action and not for the cause of action relating to this suit. And therefore it appears there is sufficient ground for permitting the plaintiff to withdraw the present suit as plaintiff do not intend to proceed in this case and may file any other suit on fresh cause of action but shall be precluded from filing any fresh suit in respect of such subject matter or such part of the claim which were cause of action invoved in this suit.

Considering the facts and circumstances of the Suit, the instant petition dated 22.11.2025 is hereby allowed.

Hence the instant suit is hereby disposed of on the basis of the withdrawl by plaintiff.
O/C is directed to send the record in the record room.

Sd/-
Aishwarya Srivastava
ACJJD
JO Code: JH02017