



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT HOSADURGA.**

DATED THIS THE 18TH DAY OF MARCH 2015

: P R E S E N T :

**SRI. T.SRIKANTH, B.A.L.,LL.B.,
ADDL. CIVIL JUDGE & J.M.F.C., HOSADURGA.**

O.S.NO.104/2013

BETWEEN :

1. SRI S.THIMMAPPA
@ THIMMANNA
SON OF Y.H.SIDDAPPA,
AGED ABOUT 50 YEARS.

2. SRI S.LOKESH
SON OF Y.H.SIDDAPPA,
AGED ABOUT 46 YEARS,

BOTH ARE AGRICULTURISTS,
R/O 2ND YALAKAPPANAHATTY VILLAGE,
KASABA HOBLI,
HOSADURGA TALUK.

PLAINTIFFS

(BY SRI C.G.RAGHAVENDRA., ADVOCATE)

AND :

1. THE DEPUTY COMMISSIONER,
CHITRADURGA DISTRICT.

2. THE ASSISTANCT COMMISSIONER,
CHITRADURGA DISTRICT.

3. THE TAHASILDAR,
TALUK OFFICE, HOSADURGA.

4. GOVINDAPPA
SON OF HANUMANTHAPPA,
SINCE DEAD BY LR's

a) SMT RATHNAMMA
W/O H.GOVINDAPPA,
AGED ABOUT 60 YEARS,

b) SRI SHANTHA KUMAR

SON OF H. GOVINDAPPA,
 AGED ABOUT 33 YEARS,
 c) SRI DINESH KUMAR
 SON OF H.GOVINDAPPA,
 AGED ABOUT 30YEARS,

d) SMT MANJULA
 D/O H.GOVINDAPPA
 W/O LEPAKSHI,
 AGED AOBUT 28 YEARS,

e) SRI VASANTH KUMAR
 S/O OF H.GOVINDAPPA,
 AGED ABOUT 26 YEARS,

ALL ARE RESIDENTS OF
 2ND YALAKAPPANAHATTY VILLAGE,
 KASABA HOBLI, HOSADURGA TALUK.

5. SRI.SRI.SRI.PURUSHOTTHAMANANDA
 PURI MAHA SWAMIGALU, BHAGEERATHA
 PEETA, BRAHMAVIDYA NAGARA,
 MADHURE POST, KASABA HOBLI,
 HOSADURGA TALUK.
 CHITRADURGA DISTRICT.

DEFENDANTS

**(D-1 TO 3, DELETED, AS PER ORDER DATED 05/08/2014)
 (LRs OF D-4 BY SRI. R.KRISHNAPPA., ADVOCATE)
 (D-5 BY SRI. M.S.SADYOJATHA., ADVOCATE)**

**ORDER ON I.A.NO.IX FILED BY PLAINTIFF UNDER
 ORDER 23 RULE 1(a) AND (b) OF CODE OF CIVIL
 PROCEDURE**

The plaintiff No.1 has filed this application praying permission of this court to withdraw the above suit and file fresh suit on the same cause of action.

2. In the affidavit filed in support of the application, the plaintiff No.1 has contended that the reliefs sought and documents produced in the above case are not consisted and that it is not possible to cure the defects by making amendment to plaint and in order to avoid multiplicity proceedings, it is necessary to withdraw the above suit and file fresh suit on same

cause of action. As otherwise he will be put to great hardship and injustice will be caused to him.

3. The LR's of defendant No.4 have filed objections to the application contending that, the issues in the above case is already framed and that plaintiffs have taken sufficient time to lead their evidence and they are yet to begin their side of evidence. At this stage the 1st plaintiff has come up with this application. It is contended that suit schedule properties are acquired by defendant No.4 through registered partition deed and will, as such plaintiff has no right, interest, over suit schedule property and plaintiff has no cause of action to file a fresh suit. It is further contended that the affidavit filed in support IA No.IX does not disclose any defect in the plaint to withdraw the suit. Hence, it is prayed to dismiss the application.

4. When the matter was posted for hearing on the application, the counsel for plaintiffs has filed a memo along with affidavit of plaintiff No.2 stating that he has no objection for plaintiff No.1 to withdraw the suit.

5. Heard. Records perused. The points that arise for determination in this I.A.No.IX are as follows:-

1. Whether I.A.No.IX is fit to be allowed?
2. What Order?

6. Findings on the above points are as follows:-

Point No.1: Affirmative.

Point No.2: See Order below.

7. POINT-1 : Admittedly the plaintiffs have filed this suit seeking for a delectation that suit schedule properties are the joint family properties and that they are the owners of suit schedule item No.2 property and for a direction to defendant No.4 to execute registered partition deed in the name of 1st plaintiff. It is the case of plaintiffs that suit schedule properties were acquired by plaintiffs and defendant No.4 when they were in joint family. However now the plaintiff contended that said properties are not joint family properties but are the self acquired properties of plaintiffs and deceased original defendant No.4. According to plaintiffs the pleadings and the reliefs sought in the above suit and documents produced are not in consistency and it is not possible to correct the same by making amendment of the plaint and hence sought for withdrawal of their suit.

8. As per the provisions of Order 23 Rule 1 of Code of Civil Procedure, if the suit is going to fail by reason of any formal defects in the suit, on the application of plaintiff, the court can allow the plaintiff to withdraw the suit and if plaintiff shows that there are sufficient grounds for allowing him to institute fresh suit for the subject matter of suit or part of a claim, court can grant him the liberty. In the instant suit, from the perusal of the plaint and documents available on record, it appears that, the pleadings and reliefs sought by the plaintiff are not consistent and the plaintiffs' suit may fail on this defect, as such there are sufficient grounds for allowing the plaintiffs to institute a fresh suit for the subject matter of suit or part of a claim. Hence, I hold this point in favour of plaintiff in the **affirmative**.

9. Point No.2 : The above suit is of the year 2013. The pleadings in the above suit is already completed and issues

is also framed in this suit, however the plaintiffs yet to begin their evidence. There is considerable delay in filing this application and the same has caused some inconvenience to the defendants, the same can be compensated by awarding costs to the defendants and the same would meet the ends of justice and equity. Hence, I proceed to pass the following:-

ORDER

The I.A.IX filed by plaintiffs under Order 23 Rule 1 of Code of Civil Procedure, is hereby allowed.

The plaintiffs are permitted to withdraw this suit and are at liberty to file fresh suit on the same cause of action, in accordance with law. However, the plaintiffs have to pay cost of Rs.300 to legal representatives of deceased original defendant No.4.

(Computerized, corrected, revised and then signed by me in the open court on this the 18th day of March 2015.)

(T.SRIKANTH)
Addl. Civil Judge
Hosadurga.