

Parties to IA No.IX**PLAINTIFF/
APPLICANT :**Sri. S. Thimmappa @
Thimmana,**Versus****DEFENDANTS/
OPPONENTS :**Sri. Govindappa Dead by LR's &
another**ORDERS ON IA No.IX**

The Plaintiff No.1 has filed I.A. No.9 under Order XXIII Rule 1(a) & (b) of CPC, seeking permission of this Court to withdraw the suit with liberty to file a fresh suit on the same cause of action, in the interest of justice and equity.

2. In the affidavit filed in support of the application, Plaintiff No.1 contends that he has filed the present suit for declaration and consequential relief of permanent injunction. It is stated that the lands bearing Sy. No.39/1A1 and Sy. No.39/2B were purchased under a registered sale deed dated 15-09-1978 in his name by his father, and that the deceased Govindappa had also purchased adjacent land. It is further contended that both parties have mutually partitioned the properties and are in possession and enjoyment of their respective shares.

The plaintiff further contends that the suit properties are not joint family properties but self-acquired properties, and that he has been in possession of his share for the past 30 years without interference. It is also stated that there are inconsistencies in the pleadings and documents, which cannot be cured by way of amendment. Hence, it is prayed that this Hon'ble Court may kindly allow I.A. No.9 in the interest of justice and equity.

The learned counsel for Plaintiff No.2 has filed a memo along with an affidavit of Plaintiff No.2 stating that he has no objection for withdrawal of the suit.

3. Per contra, the defendants have filed objections contending that the application is belated, not maintainable either in law or on facts, and liable to be dismissed. The suit was filed on 08-04-2013; written statement has been filed, LRs of Defendant No.4 were brought on record, issues were framed, and the matter was posted for plaintiffs' evidence, granting last chance on 02-02-2015.

On 02-02-2015, Sri M. Mohankumar, Advocate, filed vakalath along with NOC for the plaintiffs and sought time for evidence, and the matter was adjourned to 12-02-2015 as a last chance. However, at this stage, the plaintiffs filed the present application under Order XXIII Rule 1 CPC seeking withdrawal of the suit with liberty to file a fresh suit on the same cause of action.

The defendants contend that despite about 15 adjournments from 07-04-2014 to 02-02-2015, the plaintiffs have failed to adduce evidence, and the application is filed only to protract the proceedings. It is further contended that while the plaintiffs have pleaded that the suit properties are joint family properties, in the affidavit they have taken a contrary stand stating that the properties are self-acquired, thereby changing their case.

It is also contended that the suit properties were acquired by Defendant No.4 through a registered partition deed and Will, and the plaintiffs have no right or interest. The plaintiffs have not shown any formal defect or sufficient grounds as required under Order XXIII Rule 1(3) CPC. Hence, it is contended that allowing the application would prejudice the defendants, affect the merits, and lead to multiplicity of proceedings and wastage of judicial time. Therefore, the defendants pray to dismiss the application with cost.

4. This Court, after hearing the matter, had earlier allowed I.A. No.9 and permitted the plaintiffs to withdraw the suit with liberty to file a fresh suit on the same cause of action. Being aggrieved by the said order, Defendant Nos.4(a) to (e) preferred a Civil Revision Petition before the Hon'ble High Court of Karnataka in CRP No.217/2015 (IO). The Hon'ble High Court, by order dated 24-

11-2020, set aside the order of this Court and remanded the matter for fresh disposal after hearing both parties.

5. Thereafter, this Court again allowed I.A. No.9. Being aggrieved by the same, Defendant Nos.4(a) to (e) once again preferred a Civil Revision Petition before the Hon'ble High Court of Karnataka in CRP No.295/2021 (IO). The Hon'ble High Court, by order dated 14-11-2025, again set aside the order of this Court and remanded the matter for fresh disposal.

6. While remanding the matter, the Hon'ble High Court directed that the plaintiffs shall list out the technical reasons for seeking withdrawal of the suit with liberty to file a fresh suit. It was further directed that, upon such reasons being furnished, the contesting defendants shall be given an opportunity to put forth their objections, and thereafter this Court shall pass a fresh order on I.A. No.9 in accordance with law.

7. After remand of the matter, both the counsels have filed their written arguments, and the learned counsel for the plaintiff no 1 has also filed an additional affidavit in support of I.A. No.9. This Court has heard the arguments of the learned counsels for the plaintiffs and Defendant Nos.4(a) to (e).

8. The learned counsel for Defendant Nos.4(a) to (e) has relied upon the following decisions: (i) AIR 1973 SC 643; and (ii)

1980 (2) KLJ 391. This Court has carefully and meticulously perused the aforesaid decisions, examined the principles and ratio laid down therein, and applied the same to the facts and circumstances of the present case.

9. Upon perusal of the records and materials placed on record, the following points arise for consideration of this Court in I.A. No.9:

1. Whether the plaintiffs have made out sufficient grounds to allow I.A. No.9 filed under Order XXIII Rule 1(a) and (b) of the Code of Civil Procedure?

2. What order?

10. Findings of this court to the above points are as under :

Point No.1: In the Negative.

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

REASONS

11. point no 1: The plaintiffs have filed the present suit seeking declaration and mandatory injunction, submitted that the suit schedule properties are the joint family properties of the plaintiffs and Defendant No.4, and also seeking a direction to Defendant No.4 to execute a registered partition deed in favour of Plaintiff No.1. It is their case that the suit schedule properties were acquired during the subsistence of the joint family. However, the plaintiffs have taken a contrary stand contending that the said properties are not joint

family properties, but are the self-acquired properties of the plaintiffs and the deceased Defendant No.4. According to the plaintiffs, the pleadings, reliefs sought, and the documents produced are inconsistent with each other, and such defects cannot be cured by way of amendment of the plaint. Hence, they have sought permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

12. In compliance with the directions of the Hon'ble High Court of Karnataka to point out the formal defects and list out the technical reasons for seeking withdrawal of the suit, Plaintiff No.1 has filed written arguments and an additional affidavit in support of I.A. No.9.

13. In the said written argument contended that the plaintiffs have filed the suit for declaration and possession and the defendants have denied the plaint averments by filing written statements. During the pendency of the suit, the plaintiffs filed I.A. No. IX seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. This Court had earlier allowed the said application on 15-04-2021. The same was challenged before the Hon'ble High Court of Karnataka in CRP No. 295/2021, wherein the said order was set aside and the matter was remanded with a direction to consider the specific defects/reasons and to hear the

defendants before passing fresh orders. Now, the plaintiffs contend that there are material inconsistencies between the pleadings, reliefs, and documents, and that the suit properties, though pleaded as joint family properties, are in fact self-acquired properties. It is further contended that such defects are fundamental in nature and cannot be cured by way of amendment, and hence withdrawal of the suit is necessary to avoid multiplicity of proceedings.

14. And further in the said additional affidavit, it is contended that the suit schedule properties were purchased under a registered sale deed dated 15-09-1978 in his name by his father, and that the deceased Govindappa had also purchased adjacent lands. It is further contended that the said properties were mutually partitioned between them, and that they were in possession and enjoyment of their respective shares.

15. The plaintiff has further contended that the suit properties are not joint family properties but self-acquired properties, and that he has been in possession of his share for more than 30 years without interference. It is also contended that there are inconsistencies in the pleadings, reliefs sought, and documents produced, which, according to the plaintiff, cannot be cured by way of amendment of the plaint. In this regard, the plaintiff has sought to point out certain alleged defects, such as inconsistencies in the genealogy,

pleadings relating to partition, and the reliefs claimed in the plaint. On these grounds, the plaintiff has sought permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

16. The learned counsel for Defendant No.4(a) to (e) has filed written arguments contending that the present application is not maintainable either in law or on facts and is liable to be dismissed. It is submitted that this is the third round of litigation, and the Hon'ble High Court of Karnataka, while remanding the matter in CRP No.217/2015 and CRP No.295/2021, has specifically directed the plaintiffs to furnish a list of technical defects or formal reasons for withdrawal of the suit. However, the plaintiffs have failed to comply with the said direction despite giving an undertaking before the Court. It is further contended that neither in the affidavit filed in support of the application nor in the written arguments have the plaintiffs disclosed any formal defect as required under Order XXIII Rule 1 CPC. The plaintiffs have merely reiterated the plaint averments and the contents of the affidavit without specifying any technical grounds. It is also contended that the suit is of the year 2013, and after completion of pleadings and framing of issues, the matter was posted for plaintiff's evidence. The plaintiffs have taken several adjournments and failed to adduce evidence. At the stage of last opportunity for evidence, the present application has been filed,

which shows that it is belated and intended to protract the proceedings.

17. The learned counsel further submits that the grounds urged by the plaintiffs relate to the merits of the case and the title of the property and do not constitute formal defects. Hence, the application does not satisfy the requirements of Order XXIII Rule 1 CPC. It is also contended that if the application is allowed, it would cause serious prejudice to the defendants, lead to multiplicity of proceedings, and result in a waste of judicial time. Therefore, it is prayed that I.A. No.9 filed by the plaintiffs be dismissed with costs.

18. Before proceeding to consider the matter, it is incumbent upon this Court to refer to the relevant statutory provision, which is extracted hereunder:

“ORDER XXIII, Rule 1: WITHDRAWAL AND ADJUSTMENT OF SUITS

[1. Withdrawal of suit or abandonment of part of claim.-

(1) 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:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend,

neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, 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 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 the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), 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.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit part of a claim, without the consent of the other plaintiffs.”

19. On perusal of the above provision, it reveals that at any stage of the proceedings, the plaintiff may make an application seeking permission to withdraw the suit with liberty to file a fresh suit. However, sub-rule (3) of Rule 1 of Order XXIII of CPC mandates that the Court must record its satisfaction that the suit would fail by reason of some formal defect, or that there are sufficient grounds for permitting the plaintiff to institute a fresh suit on the same subject matter or part of the claim, on such terms as it deems fit. It is useful to refer to the decision of the Hon'ble Supreme Court of India reported in **(2017) 5 SCC 63**, in the case of **V. Rajendran and Another v. Annasamy Pandian**, wherein it is held as follows: *“The power to allow withdrawal of suit is discretionary, and the principle under Order 23 Rule 1(3) CPC is founded on public policy to prevent institution of suits again and again on the same cause of action. Further, a suit may be withdrawn with permission to bring a fresh suit only when the Court is satisfied that the suit must fail by reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. allow withdrawal of suit*

is discretionary, and the principle under Order 23 Rule 1(3) CPC is founded on public policy to prevent institution of suits again and again on the same cause of action. Further, a suit may be withdrawn with permission to bring a fresh suit only when the Court is satisfied that the suit must fail by reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit”.

20. It is pertinent to note that the Hon'ble High Court of Karnataka, in its order dated 24.11.2020 passed in CRP No. 217/2015, has observed that while considering an application under Order XXIII Rule 1 CPC, the Court must satisfy itself as to whether the conditions stipulated under order XXIII rule 1(a) and (b) are fulfilled, namely, whether the suit is liable to fail by reason of a formal defect or whether sufficient grounds exist to permit the plaintiff to institute a fresh suit.

Further, by order dated 14.11.2025 passed in CRP No. 295/2021, the Hon'ble High Court specifically directed the plaintiff to set out the technical reasons for seeking withdrawal of the suit with liberty to file a fresh suit.

21. On careful perusal of the application and the affidavit filed in support thereof, it is evident that the plaintiff has failed to specifically disclose any formal or technical defect in the suit. The

grounds urged by the plaintiff pertain to inconsistencies in pleadings, documents and reliefs, which relate to the merits of the case and not to defects of a formal nature. It is well settled that a “formal defect” refers to defects of form or procedure which may result in failure of the suit without adjudication on merits, and does not include defects relating to factual controversies or substantive rights of the parties. The grounds urged in the present application do not fall within the ambit of such formal defects.

22. Further, though liberty is sought to institute a fresh suit, the plaintiff has failed to establish any sufficient or cogent grounds warranting such permission. The reasons assigned are vague and unsupported by material particulars. It is also to be noted that, despite specific directions of the Hon’ble High Court, the plaintiff has not complied with the requirement of furnishing technical reasons. The written arguments and additional affidavit filed are mere reiteration of the plaint averment, without any additional particulars.

23. In view of the above, this Court is of the considered opinion that the plaintiff has failed to establish that the suit suffers from any formal defect or that there exist sufficient grounds to permit withdrawal of the suit with liberty to institute a fresh suit. **Hence, this court answered point Nos.1 in the negative.**

24. **Point No-2.** For the reason assigned above, this court proceeds to pass the following:

ORDER

IA No-IX filed by the Applicant/Plaintiff U/o
23 Rule 1(a) and 1(b) of the Civil Procedure Code is
hereby dismissed.

No order as to cost.

For plaintiff evidence.

Call on 08.04.2026.

(Dictated to the Stenographer directly on the computer typed by her, corrected and pronounced by me in the open court on this the 28th day of March, 2026).

**Addl. Civil Judge & JMFC.,
Hosadurga.**