

## **ORDER ON I.A. NO.27**

The present application has been filed by the defendant No.2 to 4 under Order 23 Rule 1(3) of CPC seeking withdrawal of the counter claim has not press and seeking the liberty to file the fresh suit with respect to the counter claim.

**2.** In support of the said application the defendant has also filed memo of facts wherein they contends that due to certain formal defects e.g., not mentioning the full detail of the defendant property, the counter claim cannot be effectively proceed within the present proceeding and prays to allow the application with liberty to file the fresh suit.

**3.** On the other hand learned counsel for plaintiff submit no objection to the present application.

**4.** Heard learned counsel for defendant on present application..

**5.** In view of the above contentions, the following points arises for consideration of the above application;

**1. Whether the defendant makes out sufficient grounds to allow the present application?**

**2. What order ?**

**6.** The answers of this Court for the above points for consideration are as follows;

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

Point No.2: As per final order

for the following:

**REASONS**

**7. POINT No.1:** The present suit has been filed by the plaintiff against the defendant seeking for the relief of permanent injunction. When the matter has been posted for reply arguments of the plaintiff on the merits the defendant No.2 to 4 have come up with this application by seeking to withdraw the counter claim filed by the defendant No.2 to 4 in the present case.

*“As per Order 23 Rule 1(3) of CPC allows a plaintiff to withdraw a suit with liberty to file a fresh suit on the same cause of action if the court is satisfied that the suit must fail due to a formal defect or other sufficient grounds.”*

**8.** Herein the present case the plaintiff states that due to certain formal defects the application needs to be allow. But the plaintiff has not specifically mentioned the what kind of defects need to be correct in the present suit and the plaintiff has failed to mention the sufficient grounds without showing the defects arised in the counter claim filed by the defendant No.2 to 4 in the present case only by saying the due to formal defect. Except the said

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contention the defendant No.2 to 4 have not mentioned the specific reason to withdraw the counter claim. Hence there is no ground made out to this Court to allow the application filed by the defendant No.2 to 4 in the present case. Hence, this Court answers point No.1 in **“Negative”**.

**9. Point No.2:** In view of the reasons recorded on the above Point No.1, this Court proceeds to pass the following:

**ORDER**

**I.A.No.27 filed by the defendant No.2 to 4 under Order 23 Rule 1(3) of CPC is hereby rejected.**

**For reply arguments on merits by the plaintiff if any.**

**Call on 01.04.2026.**

**Sd/-**  
I Addl. Civil Judge & JMFC.,  
Mudigere.