

KACN320019552015



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,
AT KOLLEGALA

PRESENT: SRI. M. RANJITH KUMAR B.A,L' L.L.B.
I Addl. Civil Judge & JMFC., Kollegala.

Dated on this the 06th day of March 2026

OS No.217/2015

Plaintiffs : P. Alan Prabhu & Others

Versus

Defendants : Francis & Others

INTERIM APPLICATION NO -XI

Applicants/
(Plaintiffs) : P. Alan Prabhu & Others

Versus

Opponent/
(Defendants) : Francis & Others

i.	Provision under which the application is filed	Under Order XXIII Rule 1 of CPC.
ii.	Relief sought for	Seeking to withdraw the suit
iii.	The date on which the application is filed	11.08.2025
iv.	Number of the application	XI
v.	The date on which the objections are filed by the different opponents	Not filed
vi.	The date on which the orders were passed on the said application	06.03.2026

ORDER ON IA-XI

1) The plaintiffs have filed IA No-XI under Order XXIII Rule 1 of Code of Civil Procedure, seeking to withdraw the suit with liberty to file fresh suit on the same causes of action. It is the contention of the plaintiffs that, their mother had initially filed suit on their behalf representing them as minor guardian and subsequently she was discharged as minor guardian and plaintiffs herein have continued to contest the suit on their own. It is their further contention that, their suit suffers from

inherent problems like anomalies and lacuna leading some contradictions in suit reliefs and schedule of property.

2) The defendants inspite of grant of sufficient opportunity failed to file objection to IA No-XI. Hence objections of defendants was taken as nil.

3) Both the plaintiffs and defendants inspite of grant of sufficient opportunities failed to address arguments on IA No-XI. Perused materials on record, perused materials on record. Accordingly, the following are the points for consideration of this court.

1. Whether plaintiffs are entitled to grant liberty to file fresh suit on the same cause of action?

2. what Order?

4) For the reasons stated below, this court answers the above points for consideration as hereunder :

Point No.1 – In the Negative.

Point No.2 – As per the final order.

REASONS

5) POINT NO.1 :

The plaintiffs have filed the present suit for declaration and mandatory injunction, wherein they have filed the present application under Order XXIII Rule 1 of CPC, seeking withdrawal of the suit with liberty to file fresh suit on the same cause of action. It is their contention that, through their counsel they have come to knowledge regarding inherent problems in their suit like anomalies and lacuna in the pleadings, contradictions in the suit prayers and schedule properties as such they are seeking to withdraw the suit and file fresh suit on the same cause of action.

6) Apparently, the plaintiffs being dominus litus is entitled to withdraw the suit. But the question is whether the plaintiffs are entitled for grant of liberty to file fresh suit on the same cause of action. The plaintiffs initially had filed the present suit through their mother, representing them as minor guardian against defendants seeking mandatory injunction

and subsequently the minor guardian Smt. Martha Mary was discharged respectively on 15.07.2017 and 07.09.2022. Subsequently the plaintiffs contesting the suit on their own have made several amendments and included the relief for declaration of ownership and mandatory injunction for delivery of possession and finally when the case was posted for hearing arguments of defendants, the plaintiffs have filed present application seeking withdrawal of the suit with liberty to file fresh suit on the same cause of action.

7) The plain reading of Order XXIII Rule 1 of Code of Civil Procedure would suggest that, the plaintiffs are entitled to withdraw the suit at any time after instituting the suit. But if they desire to file a fresh suit on the same cause of action, they must establish the terms which are provided under Sub Rule 3 of Order XXIII of Code of Civil Procedure, wherein the code mandates for plaintiffs to show either formal defects in their suit or any other sufficient grounds to grant liberty in their favour to file fresh suit on the same cause of action. In the present case if the affidavit filed along with the application

is perused it could be observed that, at Paragraph no.6 of the affidavit pertains to grounds urged for withdrawal of the suit and the same is culled out hereunder for ready reference.

6. I do further swear that after a clear perusal of the suit with my counsel on record, it has come to my knowledge that the suit suffers from inherent problems like anomalies and lacunae in the pleadings, contradictions in the suit prayers and schedule of property. Hence, going forward with the present suit would hamper my rights over the ancestral property. Hence, this affidavit and accompanying application

8) From the perusal of the above recited paragraph, it could be observed that, it is contention of the plaintiffs that, their suit suffers with some inherent problems like anomalies and lacuna in pleadings and contradictions in suit prayers and schedule property but the code mandates plaintiffs to show what are such anomalies lacking in their suit or what are the formal defects that are found in their suit leading to cause injustice to them. The Hon'ble Supreme Court interpreting the terms formal defect and sufficient grounds in the case of **V. Rajendran versus Annaswamy Pandian**, as held as hereunder.

9. Order XXIII Rule 1(3) CPC lays down following grounds on which a Court may allow withdrawal of suit. It reads as under:

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

(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.

As per Order XXIII Rule 1(3) CPC, suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail for reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The power to allow withdrawal of a suit is discretionary. In the application, the plaintiff must make out a case in terms of Order XXIII Rule 1 (3) (a) or (b) CPC and must ask for leave. The Court can allow the application filed under Order XXIII Rule 1 (3) CPC for withdrawal of the suit with liberty to bring a fresh suit only if the condition in either of the clauses (a) or (b) that is, existence of a “formal defect” or “sufficient grounds”. The principle

under Order XXIII Rule 1 (3) CPC is founded on public policy to prevent institution of suit again and again on the same cause of action.

10. In K.S. Bhoopathy and Ors. vs. Kokila and Ors. (2000) 5 SCC 458, it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient grounds”, such right cannot be considered to be so absolute as to permit or encourage abuse of process of Court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order XXIII Rule 1(3) CPC, the Court must be satisfied about the “formal defect” or “sufficient grounds”. “Formal defect” is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc. “Formal defect” must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause(b) should be read independent of the words a 'formal defect' and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is "sufficient grounds".

9) From the understanding of Order XXIII Rule 1 of CPC and interpretation provided by Hon'ble Apex Court, it can be understood that, it is the burden on the plaintiffs to show existence of formal defects or any other sufficient grounds leading to cause injustice in their favour. But in the present case on hand, as already discussed the plaintiffs have utterly failed to establish or show what are the formal defects that are

found in their suit, leading them to cause injustice in their favour. Thus, this Court is of the opinion that, in the facts and circumstances of the case where plaintiffs have failed to show existence of formal defect or existence of sufficient grounds to grant liberty in their favour to withdraw the suit, this Court cannot grant liberty in favour of the plaintiffs to withdraw the suit with liberty to file the fresh suit. Accordingly this Court answers **Point No.1 In the Negative.**

10) POINT NO.2: For the reasons stated above this court proceeds to pass the following order.

:- ORDER :-

The IA No-XI filed by the plaintiffs under Order XXIII Rule 1 of Code of Civil Procedure is hereby dismissed.

(Dictated to the stenographer, transcribed and typed by him, the same is corrected, signed and then pronounced by me in the open court on this the 06th day of March 2026).

(M. RANJITH KUMAR)
I Addl.Civil Judge & JMFC.,
Kollegala.