

Case called out. The learned counsels for the defendants are present. Sri. VC advocate has filed vakalth on behalf of the plaintiff with no objection of previous counsel.

The learned counsel for the plaintiff has filed IA No.11 U/o 23 rule 1 R/w sec.151 of CPC seeking permit the plaintiff to withdraw the suit and to file a fresh suit on same cause of action of earlier suit.

Copy of the application duly served on defendants side. The learned counsels for the defendants have submitted no objection subject to limitation.

Heard the IA No.11. For order on IA No.11. Kept at 4.30 PM.

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3. Sr. C. J & JMFC., Cng.,

**ORDERS ON IA No.11 FILED UNDER
ORDER 23 RULE 1 RW. SEC. 151
OF CPC**

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The present interim application has been filed by the learned counsel for the plaintiff seeking permit the plaintiff to withdraw the present suit and permit the plaintiff to file fresh suit on the same cause of action.

2.The present interim application is accompanied with the sworn affidavit of the

plaintiff. Wherein he has averred that he has filed suit for partition and separate possession of undivided joint family properties, but his earlier counsel representing him have not correctly make over the true facts which are essential to prove his case and the suit was filed on 2021 but till today his earlier counsel have not correctly followed the procedure of law and not made necessary parties this suit and in the meanwhile he had filed several application for amendment and impleading the parties and these necessary facts to be operated in the earlier stage of filing the suit and his counsel have clearly narrated the facts in the plaint which cannot be amended at any point of time and this may not be a reason for any order of this court against him in future.

3. Further stated that till today the summons is not correctly served to the parties and there are also some other person as they are necessary parties to this suit were not made as parties till today and he has already given information to his counsel to make them as parties to this suit and also the prayer sought by his counsel infectious and also the earlier transaction which was held in the family was not correctly explained in the plaint averment as those information are basic truth in order to prove the case and those facts cannot be implicated in the above paras of the plaint as this may cause huge confusion and it may also one of the ground for such an order which may occurred against him in this suit. Further stated that he has

appointed new counsel in order to proceed his case and he went on through the plaint and he may discussion with him about the family affairs and transaction of properties done behind back of him by the defendants as well as other information which required to prove those facts by essential means were not incorporated in correct way and any point of time it cannot be made amended and it would be difficult to proceed and on the advice of his new counsel he decided to withdraw the suit and to file a fresh suit on the same cause of action. Hence, he prays to allow the application.

4. Heard and perused the material placed on record.

5. In the instant suit, the plaintiff himself he approached the court for the relief of Partition, separate possession, Declaration and such other reliefs against the defendants. Now the plaintiff himself has not ready to prosecute the suit. Any persons who approached the court for any of the relief cannot be insisted to prosecute the suit by direction of the court. They are at liberty withdrawing the suit at any point of time. The only question remain is, whether the plaintiff is liable to file the suit on the same cause of action.

6. The plaintiff is permitted to withdraw his suit and file fresh suit on the same cause of action. But, if the limitation of time is applicable to the fresh suit, this court cannot come to aid of the same. He

has to prove the same on his own leg. With these observations, the suit filed by the plaintiff is dismissed as withdrawn and the plaintiff is permitted to file the fresh suit on the same cause of action subject to conditions, if limitation applies them cannot take shelter under the order of this court.

Sd/-

Sr. C. J. and JMFC, Cng.,