

**IN THE COURT OF THE II ADDL. CIVIL JUDGE AND
JMFC., MAGADI.**

O.S.NO:171/2011

**Presented BY
Rekha H.C.
II Addl. Civil Judge and JMFC., Magadi.**

Dated:28-05-2018

PLAINTIFFS

- : 01. Sri.Narasimhaiah
S/o late Muniswamaiah
Aged about 62 years
R/at Belagumba, Kasaba Hobli,
Ramanagara District.
02. Sri.Gopal. M
S/o late Muniswamaiah,
Aged about 59 years,
03. Sri.Chandraiah. M
S/o late Muniswamaiah,
Aged about 56 years,
- No.2 and 3 are R/at No.28,
Gokula Nilaya, 1st Main, 10th Cross,
Kottige Palya, Magadi Main Road,
04. Sri.Ramanna,
S/o late Muniswamaiah
Aged about 53 years
R/at Belagumba, Kasaba Hobli
Ramanagara District.
05. Smt. Jayamma
W/o Nanjundappa

D/o Late Muniswamaiah
R/at Annekaranahalli,
Madabalu Hobli, Magadi Taluk,
Ramanagara District.

06. Smt. Bhagyamma @ Sowbhagyamma
W/o Ramanna
D/o Late Muniswamaiah
Aged about 47 years

07. Smt. Varalakshamma
W/o Ramakrishna,
D/o Late Muniswamaiah
Aged about 44 years

No.6 and 7 are R/at
No.56, Ranganathapura,
Madeshwara Temple Road,
Kamakshipalya, Bangalore-560079.

V/S

DEFENDANTS : 01. Sri. Maregowda
S/o Late Mudlageraiah
Aged about 56 years,
R/at Belagumba, kasaba Hobli,
Magadi Taluk,
Ramanagara District.

ORDER ON I.A.VII UNDER VI RULE 17
R/W SEC 151 OF CPC.

The Plaintiff has filed this application U/O 23 rule 1
R/w 151 of CPC, prays that court may be pleased to

withdraw the suit with liberty to file fresh suit on the same cause of action in the interest of justice and equity.

2. On Notice on IA defendants filed objection to this application and contended that the suit is of 7 years old. The evidence of the plaintiff's side partly recorded by the Hon'ble court. The case is set-down for further cross examination of PW-1. Instead of tendering the PW-1 for further cross examination, the plaintiffs have filed this untenable application with an intention to harass this defendant. Hence, the application filed by the plaintiffs is not maintainable and liable to be dismissed.

3. Heard on application.

4. Perused application.

5. Points that would arise for my consideration are as under:-

01. Whether the application is deserved to be allowed?

02. What order?

6. My answers to the above points are as under:-

Point No.1 : In the “**Partly Affirmative**”.

Point No.2 : As per final order.

for the following:-

REASONS

7. **Point No. 1:** - The plaintiffs have filed the suit for the relief of Declaration and permanent injunction against the defendants.

8. The Plaintiffs have filed this application and stated that there are some formal defects in the above suit which could not be rectified at this point of time and the suit may fail for the reason of such formal defect. If the case is prosecuted, it

will be very difficult to adjudicate the case properly. For effective adjudication of the case, a new suit is to be filed by withdrawing the above suit. Hence, this application.

09. On perusal of the plaint and available documents on records, this is a suit for Declaration and Injunction against the defendants. The plaintiff further stated that the schedule property is the ancestral joint property of the plaintiffs. After the death of Muniyappa, father of the plaintiff, he was in possession and enjoyment over the schedule property and there was an oral partition between the father of the plaintiff and Chaluvegowda. As per the partition, the father of the plaintiff got 37 ½ guntas of schedule property. The plaintiff further stated that the plaintiffs have succeeded to the schedule property and he is in possession and enjoyment over the schedule property. In this regard, the plaintiff has not produced any cogent and documentary evidence to prove his contention. Moreover, he sought relief for declaration that

the sale deed on dated 28-6-1969 is does not binding for the plaintiff share. The sale deed executed more than 50 years back. The law of limitation definiety attracted to this suit.

Order 23 Rule 1 says that

***Withdrawal of suit or abandonment
of part of claim***

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.

10. Above discussion on relay upon the Order 23 Rule 1 of CPC plaintiff has failed to give a sufficient reason institute a fresh suit for the same subject matter Hence, there is no grounds to give a liberty to file a fresh suit on the same cause of action. Hence, my answer is point no.1 is **Partly Affirmative.**

10. **Point No.2:** Above discussion I proceed the following:-

ORDERS

**The I.A. filed by plaintiff IA-VII U/O
23 Rule 1 R/w 151 of CPC is hereby
Partly allowed.**

**The plaintiff is permitted to withdraw
the above suit.**

(Dictated to the Typist on computer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 28th day of May-2018).

**(Smt.Rekha H.C.)
II Addl. Civil Judge & JMFC.,
Magadi.**