

**Orders on application under Order 23 Rule 1(3) of
CPC**

The plaintiff has filed this application to withdraw the suit with liberty to file fresh suit in the interest of justice and equity.

2. In the affidavit to the accompanying application it is submitted that this is the suit for partition and that she could not give correct information to her advocate at the time of filing the suit, because of which the suit is not tenable in the eye of law. Some of the facts have been learnt by her subsequently. No evidence has been commence and no hardship would be caused to the defendant and therefore in order to seek the proper relief prays to allow the application.

3. The advocate for defendant has filed objection that the plaintiff cannot withdraw the suit because the defendant is seeking for partition of properties other than item No.1 suit property. The item No.1 do not belong to this family property. The grounds urged for withdrawal may be corrected by pleading and by amending the plaint. There is no defects to attract the ground under the above provision for withdrawal. The defendant would be put to irreparable hardship, if the application is allowed.

4. Heard respective advocates. The grounds urged in the application for withdrawal of not giving proper information to her advocate and that the subsequent facts have to be narrated, such facts can be brought by way of amendment. With regard to any party not impleaded, there is also provision to add the party. There is no genuine case for withdrawal sought. From perusal of Order 23 Rule 1(3) of CPC there should be some formal defect and sufficient ground has to be shown to show that the plaintiff has a ground to institute fresh suit. Here in this case the defendants have also sought for) partition and if the plaintiff is abandoning the suit, the defendant

could continue the suit in a suit for partition and therefore for the above reasons this court proceed to pass the following:

Order

The application filed under Order 23 Rule 1(3) of CPC is hereby dismissed.

Sd/-
Prl. Civil Judge & JMFC.,
C.N.Halli.