

MHBI110013802024



ORDER BELOW EXH. 01 IN RCS 342/2024

Plaintiff has filed present suit for partition and separate possession. Since 16.11.2024 suit is pending for steps. Plaintiff is absent since long. On 12.03.2026 Ld. Advocate for plaintiff orally submitted that, step will be taken on next date. Today also plaintiff and his Ld. Advocate are absent when called repeatedly. No application on record taking any steps. Plaintiff no. 1 & 2 are minor. Hence, they are represented by next friend plaintiff No. 3. In such circumstances, inference can be drawn parties may not be interested to proceed further. Hence no purpose would be served to keep this matter pending.

02. On this point I am guided by judgment of Hon'ble Supreme Court in the case of **M/s. Shiv Cotex V/s. Tirgun Auto Plast Pvt. Ltd., AIR 2011 SC (Civil) 2557**. In this case Hon'ble Supreme Court has observed that, *No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of*

Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and no exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril.

03. Considering the above authority and record of the case, I do not deem it fit to keep this matter pending further. In view of the Order 9 Rule 3 of the C.P.C. where neither party appears when the suit is called on for hearing, the court may make an order that, suit be dismissed. Considering

the above fact and circumstances, provision under **Order 9 Rule 3** of the CPC, provision under **Order 17 Rule 1 of the CPC** and aforesaid ratio of Hon'ble Supreme Court it is just and proper to adjourn hearing of the case and pending it for unlimited period without effective hearing when both the parties to suit are not interested in effective working of the court. Hence, I pass following order;

ORDER

01. Suit is dismissed in default under Order IX Rule 3 of the CPC.
02. Proceeding stands closed.

Place : Georai.
Date : 27/04/2026.

[Shruti H. Patil]
Jt. Civil Judge J.D., Georai.

