

MHBU160003412022



**Order below Exh.-27 in R.C.S. No. 37/2022**  
**Balu Vs. Martandrao & Ors.**

Present application is filed by plaintiff thereby prayed to withdraw instant suit with liberty to file fresh suit in respect of same subject matter.

2- The defendants failed to file their say despite of sufficient opportunities. Hence, matter be proceeded without say of defendants.

3- Ld. Adv. S.T. Pradhan for the plaintiff submitted that the plaintiff instituted present suit for removal of encroachment, possession and declaration. In present matter, this Court appointed Court Commissioner. The Court Commissioner filed his report wherein he mentioned that the plaintiff did not have possession over entire suit property. Hence, the plaintiff desired to institute fresh suit and claimed possession of entire suit property. Therefore, the plaintiff wants to withdraw present suit with liberty to institute new suit. With this, he prayed to allow present application.

4- Perused the application. Heard Ld. Adv. S.T. Pradhan.

5- It appears that present application is moved for withdrawal of present suit. In this regard, I would like to reproduce Order 23, Rule 1 of C.P.C.

**Rule 1 - Withdrawal of suit or abandonment of part of suit :-**

(1) At any time after institution of suit, the plaintiff may, as against all or any of the defendants, abandon his suit or abandon a part of his claim.

(2) -----

(3) Where the Court is satisfied that,

a- That a suit must fail by reason of some formal defect or,

b- ----- .

After considering above legal position, it seems that the plaintiff instituted present suit for removal of encroachment, possession and declaration. In present suit, the plaintiff claimed that he is owner of an agricultural land bearing gat No. 75 ad-measuring 0.85 R. out of 8 H. 58 R. The plaintiff further submitted that the defendant No. 1 encroached upon his agricultural land to the extent of 0.40 R. Accordingly, the plaintiff sought for declaration that he is having possession and ownership over the suit property. The plaintiff also claimed appointment of Court Commissioner for fixation of boundaries of suit property. In present matter, this Court appointed Court Commissioner for measurement of suit property. The Court Commissioner filed his report along-with map on 31/07/2023 wherein he specifically mentioned that the plaintiff did not have possession over the suit property. Thus, it

appears that there is formal defect in present suit. Therefore, there is chances that the suit will fail. Thus, condition precedent prescribed in Order 23, Rule 3(a) is satisfied. Therefore, I am of the opinion that permission to withdraw present suit with liberty to institute fresh suit needs to be granted. It appears that the defendants are absent since long. Therefore, it is not property to impose costs on the plaintiff. Hence, following order :-

### Order

- 1- Application is allowed.
- 2- R.C.S. No. 37/2022 Balu Vs. Martandrao & Ors. is disposed off as withdrawn.
- 3- The plaintiff is permitted to institute fresh suit on same cause of action.
- 4- Parties bear their own costs.

Date :- 30/03/2026

Place :- Motala.

( Satishkumar Shripatrao Gaikwad)  
Jt. Civil Judge Jr. Div.,  
Motala, Distt. Buldana.