

MHKO190007802023ORDER PASSED BELOW EXH.74 INR.C.S. 291 of 2023(Ajit Aaba Patil Vs Sanjay Mahadev
Dakare)(Date:13/10/2025)

The plaintiffs have filed this application (Exh.74) for withdrawal of the present suit with liberty to file a fresh suit.

2. Ld.Advocate for the plaintiffs has submitted that there is formal incurable defect in the present suit. Therefore, they want to withdraw the present suit with liberty to file a fresh. Hence, he prayed to allow the application.

3. Defendant Nos.3 to 9 have failed to file the say. Therefore, the application has proceeded without their say.

4. Defendant Nos.1 and 2 vide their say (Exh.76) have submitted that the application is not tenable. Defendant Nos.1 and 2 have already filed their WS and say. The plaintiffs, after institution of the suit, have voluntarily caused obstruction to defendant No.1's peaceful possession in Block Nos.114/1, 114/2, 114/3 and 114/4. They did not allow defendant No.1 to cut the standing sugarcane crops and thereby caused damage worth Rs.96,000/- to defendant No.1. The plaintiffs have also instituted another suit against defendant No.2 bearing RCS 155/2023 for partition and permanent injunction. Plaintiffs are willfully causing

annoyance to the defendant Nos.1 and 2 by instituting suits. Defendant No.2 has invested huge time in defending the present suit. Hence, he prayed compensatory costs of Rs.96,000/- and Rs.50,000/- for causing mental agony. Defendant Nos.1 and 2 have produced several documents on Exh.63 to show the damage caused to the standing crops in the above said block numbers and the steps taken by him in that regard. Ld.Advocate for defendant Nos.1 and 2 also argued that the plaintiffs have not satisfied the court about the alleged formal defect. Ld.Advocate has relied upon the following judgments in order to buttress his arguments.

- I) **Veerbhadrappa Rachatte Vs Mahalingappa Karanje** reported in (2009) 4 Mah LJ 108
- II) **K. S. Bhoopathy Vs Kokila** reported in (2000) 5 SCC 458
- III) **Tarachand Bapuchand Vs Gaibihaji** reported in AIR 1956 Bom 632

5. In reply Ld.Advocate for the plaintiffs submitted to impose minimum costs of Rs.250/- as provided under section 35A of Code of Civil Procedure (inshort CPC).

6. The Hon'ble Bombay High Court in the case of ***Veerbhadrappa (supra)*** has observed that for allowing withdrawal of suit with liberty to present fresh suit on the same cause of action, the plaintiff must disclose nature of formal defect in the application. If the application remains silent on this material point such an application cannot be entertained by the court.

7. The Hon'ble Supreme Court in the case of *K. S. Bhoopati (Supra)* has held that before granting permission for withdrawal of suit with liberty to file a fresh suit, the court is duty bound to satisfy itself that proper grounds exists for granting such permissions. Merely stating that defendant will not be prejudiced by granting the permission is not sufficient compliance with this statutory mandate.

8. The Hon'ble Bombay High Court in the case of *Tarachand (Supra)* has laid down that failure to implead parties cannot be regarded as a formal defect. The Hon'ble Bombay High Court set aside the leave granted by the Lower Appellate Court.

9. Perused the record. Heard Ld.Advocate for the plaintiffs and Ld.Advocate for defendant Nos.1 and 2. Considered the submissions.

10. Defendant Nos.1 and 2 have strongly objected the application. In their say they have nowhere prayed to reject the application but have merely prayed for saddling heavy costs of Rs.96,000/- and Rs.50,000/-. However, at this point it is necessary to reproduce Order XXIII Rule 1 (3) of CPC.

Order XXIII Rule 1-

(1)...

(2)....

(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.

11. Wordings of Order XXIII Rule 1 (3) of CPC are very clear that the court shall be satisfied that about failing of suit due to some formal defect or that there are other sufficient grounds for allowing the application. The Hon'ble Supreme Court and Hon'ble Bombay High Court have also clarified the same very strongly in the above mentioned judgments in the case of ***Veerbhadrapa (Supra)*** and ***K. S. Bhoopati (Supra)***. The ruling of ***Tarachand (Supra)*** does not apply to the present case. In both the cases of ***Veerbhadrapa (Supra)*** and ***K. S. Bhoopati (Supra)*** the withdrawal application was filed at the appellate stage. This fact does not affect the position as the observations made by the Hon'ble Supreme Court and the Hon'ble Bombay High Court in respect of the provision of Order XXIII Rule 1(3) of CPC remain the same and thus are applicable to the case in hand.

12. Applying this clear law to the facts of the present case, the plaintiffs have nowhere whispered about the nature of the alleged formal defects. The court is not made aware of any formal

defect in the suit. Therefore, the question of possibility of suit failing due to any alleged formal defect does not even arise. The court is not satisfied on the point as required under Order XXIII Rule 1(3) of CPC and by Hon'ble Supreme Court and Hon'ble Bombay High Court also. It is pertinent to note that the plaintiffs have filed this application under clause (a) of subrule 3 – i.e of 'formal defect', despite this moving ahead no other sufficient ground is made out for allowing the application.

13. In the light of above discussion application is liable to be rejected. Hence, the following order:

ORDER

The application is rejected.

sd/-

Radhanagari

(N. P. Kakade)

Date : 14-10-2025

Jt. Civil Judge Junior Division

Radhanagari.