


<b><u>ORDER BELOW EXH.118 IN R.C.S. No.139/2014</u></b>	<b>MHLA120003882014</b> 
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**ORDER PASSED BELOW EXH.84**

The present application is filed by the defendant for framing additional issue. By this application, he informed that the present suit is filed for partition of the suit property. The plaintiff filed partition suit bearing R. C. S No.198/2012 before this suit. According to plaintiffs contention, the said suit was withdrawn by the plaintiff on 16.01.2014. The said suit is dismissed due to non appearance of plaintiff. Accordingly, the present suit is barred by provision under Order IX Rule 9 of C. P. C. Thus, defendant submitted that the issue "whether the suit is barred to file fresh suit under Order IX Rule 9 of C. P. C. ?" needs to be framed.

2. The plaintiff failed to file his say since 25.04.2024. Hence, I proceed without say of plaintiff.

3. The Ld. Advocate of both parties absent for argument when called out repeatedly. Hence, the suit is pending since 2014. As per directions of Hon'ble High Court, the old matters needs to be disposed off by giving them priority. Hence, I proceed without waiting for argument of both parties.

4. Perused the plaint and written statement of defendant. The plaintiff pleaded that she filed suit bearing R. C. S. No.198/2012 for partition of same property. The said suit was withdrawn by her. However, the defendant in his written statement at Exh.45 in para no.7 pleaded that the said suit was not withdrawn. The Hon'ble Court passed decree on 29.01.2014 with operative part of the decree is the suit is dismissed with costs and decree be drawn up accordingly. In view of order passed on Exh.33 in that suit, the suit is disposed off as withdrawn. So the permission is not granted to the plaintiff to file fresh suit on the same cause of action. Accordingly,

plaintiff has no right to file same suit. The copy of withdraw application filed by the plaintiff in R. C. S. No.198/2012 is produced on Exh.16. The said application discloses that due to non-joinder of party who constructed teen shed in the suit property and non-availability of documents, she wants to withdraw that suit for filing new suit. As per Order XXIII Rule 1(3) of C. P. C., the plaintiff had allowed to withdraw the suit bearing R. C. S. No.198/2012 with liberty to institute fresh suit. Thus, it is clear that the suit bearing R. C. S. No.198/2012 was not dismissed for non appearance of plaintiff when suit is called for hearing. The provision under Order IX Rule 9 stated that the suit is wholly or partly dismissed under Rule VIII, the plaintiff shall be precluded from bringing fresh suit in respect of the same cause of action. In the present suit, R.C.S. No.198/2012 withdrawn with liberty to file fresh suit. Hence, the present suit is not barred by provision under Order XI Rule 9. Thus, the proposed issue claimed by defendant is not necessary issue. Thus, there is no need to frame the issue suggested by defendant. Accordingly, I pass following order:-

**ORDER**

1. The application at Exh.118 is dismissed.
2. Costs in cause.

Sd/-

Date : 22/11/2024  
Place : Nilanga

**(Smt. A.S. Gunjawate)**  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Nilanga.