

Exh. No.	Description	Order
Exh-24	Amendment application on behalf of respondent	Other side to say.
Exh-25	Supporting affidavit	Filed.

Place: Indapur.
Date : 04/05/2026

(Shri. P. C. Bartakke)
J.M.F.C. Indapur

Plaintiff has filed withdrawal pursis at **Exh.26** and contended that he may be permitted to withdraw the plaint with leave to institute a fresh suit. It is contended that the suit is for partition, declaration and perpetual injunction. Due to non availability of all the important documents, the plaintiff could not include all the suit properties including house properties. Moreover, the plaintiff could not implead all the necessary parties in the plaint. Therefore, there are technical defects in this suit. At last, plaintiff prayed that the permission to withdraw the plaint with leave to institute a fresh suit may be granted.

02. Defendant No.1 and 2 filed say at Exh. 38 and 39 and opposed the prayer. It is contended in say that, the suit is not for partition. Suit is for perpetual injunction. Therefore, proposed properties and parties are not necessary to the suit. The plaintiff can amend the suit and add parties and properties in the plaint. For that purpose, filing of new suit is not necessary. There are no technical defects in the plaint. The defendants are facing the trial since 2023. Therefore, if permission as sought by the plaintiff is granted, the defendants will suffer great loss. Therefore, the defendants prayed that the permission sought by plaintiff withdraw the suit with leave to file fresh suit may be rejected. Alternatively, it is prayed that plaintiff may be permitted to withdraw the suit unconditionally and may be directed to pay to the defendants compensatory costs.

03. Heard both sides. Perused record. In support of arguments, Ld. Advocate for the plaintiff relied on the Judgment of Hon'ble Madhya Pradesh High Court in case of Dwarka Prasad Vs. State of Madhya Pradesh, wherein it is held that, in suit for partition, all persons interested in the property are necessary parties to the suit

and in their absence the suit was bound to fail. Their non joinder is a formal defect. Under such circumstance, permission to withdraw the suit with liberty to institute fresh suit in respect of same subject matter shall be granted. The trial court committed error in rejecting application filed by the plaintiff.

04. As per O.23, R.1(3) of CPC where the Court is satisfied that, a suit must failed by reason for some formal defect it may on such terms as it things fit, grant plaintiff permission to withdraw from such suit with liberty to institute a fresh suit in respect of the subject matter of such suit.

05. According to plaintiff, the suit is for partition. Defendants opposed this contention of plaintiff and contended that the suit is only for perpetual injunction. Perusal of plaint Exh.1 reveals that the suit is for perpetual injunction. The suit is not for partition. Therefore, the contention of the plaintiff in this application that, the suit is for partition is totally false. Perusal of cause of action mentioned in plaint para 6 also reveals that, the cause of action is only based on alleged obstruction by present defendants. Under such circumstance, the contentions of plaintiff in this application that, the suit is for partition and necessary properties proposed in the application and necessary parties proposed in the application are not added in the plaint and there is technical defect has no substance at all.

06. The Judgment of Hon'ble Madhya Pradesh High Court in case of Dwarka Prasad Vs. State relied on by the plaintiff is in respect of suit for partition and in respect of necessary properties and parties to the suit for partition. As this suit is not for partition, the facts in case of Dwarka Prasad cited supra are different from the facts in this case.

Therefore, the Judgment in case of Dwarka Prasad cited supra is not useful for the plaintiff.

07. From the contentions in the present application, it cannot be said that there is formal defect or technical defect in the plaint. Plaintiff is at liberty to file separate suit for partition. Subject matter and reliefs claimed in this suit and in proposed suit are totally different. Therefore, I am of the view that, the plaintiff failed to satisfy this Court that there are formal and technical defects in present suit. Resultantly, permission to withdraw suit with leave to institute a fresh suit under O.23, R.1(3) of CPC cannot be granted to the plaintiff. Hence, the application deserves to be rejected. The plaintiff is at liberty to withdraw the suit unconditionally by filing separate application. Hence, the order.

ORDER

- 1] Application Exh.36 is rejected.