

R.C.S. No. 431/2016
Treveni Jadhav & ors. Vs. Narayan Bandgar &Ors.
CNR No.MHSO07-000550-2017

Order below Exh. 30 in R.C.S. No. 431/2016
(passed on 03/02/2020)

Present application filed by plaintiff no. 5 for waiving his claim against defendant no. 1 to 10 under Order XXIII Rule 1.

02. Present suit is filed by plaintiff no. 1 to 5 for declaration of sale deed as null and void against defendant no. 1 to 10. Now plaintiff no. 5 appeared before the Court and stated by present application that, he is not in good terms with other plaintiff no. 1 to 4 and therefore he wishes to delete his name as plaintiff in present suit and submitted that he want to withdraw his claim against all the defendants without liberty to file fresh suit against the present defendants.

03. Defendant no. 1 to 10 have filed their say on overleaf of the application and opposed the application. However, advocate for defendant no. 1 to 10 has not mentioned any reason for opposing the present application and he only prayed for rejection of the application.

04. Plaintiff no. 1 to 4 have not filed their say since from 29/04/2019. Today also in spite of repeated call neither plaintiff nor their advocate is appeared before the Court. Further no application is filed on record. Hence, no say order is came to be passed on exh. no. 30 on 03/02/2020 and application proceeded without say of plaintiff no. 1 to 4.

05. Perused the application and say as well as record of the case. Plaintiff no. 5 plainly wants to withdraw his claim in present suit. As plaintiff is *dominus litus* as well as master of his suit. Hence, he can very well withdraw his claim whenever he wants. In present case at hand, plaintiff no. 1 to 4 had an ample opportunity to file their say if any prejudice would caused to them if plaintiff no. 5 withdraw his claim but they choose to remain silent. Further defendant can not oppose the plaintiff regarding his claim to litigate against any defendant. Therefore considering all these circumstances, court can not enforce plaintiff to fight against the defendants if he does not wish to litigate against anyone. As plaintiff no. 5 voluntarily wanted to withdraw his claim, he can do so. Further Order XXIII Rule 1 does not mandate to file affidavit along with application to withdraw his claim. Hence, I do not find any hurdle to pass following order:-

ORDER

01. Application is allowed.
02. Plaintiff no. 5 is allowed to withdraw his claim against defendant no. 1 to 10 in view of order XXIII Rule 1, without liberty to file fresh suit against them.
03. Plaintiff to take note and proceed further.

(Dictated and pronounced in open Court.)

Date:- 03-02-2020
Place:-Pandharpur

(R. G. Kumbhar)
5thJt.C.J.J.D. & J.M.F.C.,
Pandharpur

CERTIFICATE

I affirm that the contents of this P.D.F. file order/judgment are same word to word, as per the original order/judgment.

Name of the Stenographer : M. P. Gheradi, Steno L.G.
Court Name :5thJt.C.J.J.D. & J.M.F.C., Pandharpur.
judgment signed by the P.O.on :03/02/2020
judgment uploaded on :04/02/2020