



RCS No.88/2018
Laxmibai Aswale & ors
Vs.
Laxmibai Pujari & Ors.
CRN No. MHSO-1500-1926-2018

ORDER BELOW EXH.37

1. Plaintiff no.4 filed instant application for seeking permission withdraw the plaint for herself, on the ground that, other plaintiff by misleading to her filed false suit and arrayed her as a plaintiff no.4 in the proceeding.
2. Defendant no.1A, 2A and 2B filed their say vide exh.40 and submitted that, they do not have any objection to delete the name of plaintiff no.4 as suit can not be proceeded without the concent of plaintiff no.4.
3. Co-plaintiff no.1 to 3 have filed their say vide exh.41 and contended that, the present application is not maintainable and not tenable in the eye of law. The present application is filed by joining hand with defendants. Present suit is filed for partition and plaintiff no.4 is necessary party in the proceeding. An application is not maintainable and liable to be rejected.
4. Heard both side at length.
5. Plaintiff no.4 not willing to contest the suit against the defendants and prayed for withdrawal of the suit by deleting her name. Ld. Advocate for co-plaintiffs argued that, plaintiff no.4 is necessary party in the present suit, but plaintiff no.4 herself submitted by misleading to her other plaintiffs have filed present suit. She herself admitted that, she knows about all the transaction which was took place prior to filing of the suit.

6. Order 23 of C.P.C. provides rules for withdrawal of suit by plaintiff. As per Order 23 Rule 1 (1) of C.P.C., a plaintiff may abandon the suit or abandon a part of his claim at any time after institution of the suit. Plaintiff no.4 wants to delete her name and does not want to continue as a plaintiff. She wants unconditional withdrawal of her name from the proceeding. It is pertinent to note that, court permission is only required in case of plaintiff desires to institute a fresh suit for the same cause of action. The present suit is filed for partition, declaration and injunction. All the plaintiffs are claiming their individual 1/3 share each in the suit property. Each plaintiffs have individual and equal share in the property and all the plaintiffs have independent but identical right to sue had joined in one suit because that was permissible under Order 1 Rule 1 of C.P.C. If the permission to withdraw to plaintiff no.4 from the suit granted then, the opposite party herein would be left in the same position, which had occurred on the date of filing of the suit. Therefore, if one of several plaintiffs having independent right to release which is severable from the right claimed by the other plaintiff, seeks to abandon his claim in the suit once and for all without reservation of right, then such abandonment does not affect right to relief of other co-plaintiff, therefore, in the light of aforesaid discussion, I am of the considered opinion that, the present application is deserves to be allowed and plaintiff no.4 is permitted to withdraw from the suit.

Place - Akkalkot
Date - 20/02/2025

(Smt. N. A. L. Shaikh)
Jt. Civil Judge Junior Division,
Akkalkot.

Certificate

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment/order :-

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|--|---|
| a) Name of the Stenographer | :- V. S. Kamble,
Steno Grade-III |
| b) Court | :- Jt. Civil Judge Junior Division and
Judicial Magistrate First Class,
Akkalkot. |
| c) Judgment/Order signed by PO on | :- 20/02/2025 |
| d) Judgment/Order uploaded on | :- 20/02/2025 |