



ORDER BELOW EXH. 68
IN
Spl.C.S.No.513 of 2023
(Sunil Luniya Vs. Baliram Chinchkar)

By this application, the plaintiff seeks permission to withdraw the suit with liberty to institute a fresh suit on the same cause of action. The plaintiff asserts that he has filed the present suit for specific performance of the contract dated 16.01.2016 against the defendants. He contends that he entered in agreement after decision in R.C.S. No.199/2008. The plaintiff entered into the contract on the representation that the defendant was the sole owner of the suit property. However, even after the decision in R.C.S. No.199/2008, the question of sole ownership of the defendant remains unanswered. Subsequently, the defendant's brother instituted R.C.S.No.1/2020 before the Civil Judge, Junior Division, Karmala for partition. In that suit, the defendant has given an undertaking that he shall not alienate the suit property until the decision of that suit. According to the plaintiff, the judgment in R.C.S. No.199/2008 and the undertaking given in R.C.S. No.1/2020 create hurdles in the present suit on account of non-joinder of necessary parties. Hence, the plaintiff seeks withdrawal of the suit with liberty to file a fresh suit.

2] The defendants have strongly objected to the application and filed their say at Exh.70. They have contended that the plaintiff has neither developed the suit property nor incurred any expenditure

on the alleged development. At the time of filing the suit, the 7/12 extract clearly reflected the names of other persons in the cultivator's column along with defendant Baliram. The plaintiff was aware of all these facts since the beginning. The suit is not hit by any formal defect. Non-joinder of necessary parties cannot be treated as a formal defect. The plaintiff was always aware of the existence of the defendant's siblings. The suit is pending since 2020 and the defendants have incurred substantial expenses. Defendant No.1 is suffering from kidney disease. The plaintiff has already examined three witnesses, and certain admissions favourable to the defendants have been elicited in cross-examination. According to the defendants, the plaintiff, fearing failure of the suit, now seeks to withdraw it. They further submit that if the Court is inclined to grant withdrawal with liberty, then the plaintiff should be directed to pay compensation of Rs.1,00,000/- each to defendants No.1 to 3. They pray that the plaintiff should not be permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action.

3] I have carefully gone through the application and the say. It is true that the suit is pending since 2020. Issues have been framed and the matter has proceeded to trial. The plaintiff has examined three witnesses. The plaintiff now seeks withdrawal on the ground of formal defect. It is pertinent to note that the plaintiff asserts that the judgment in R.C.S. No.199/2008 and the filing of R.C.S. No.1/2020 constitute formal defects. A ground of formal defect can support such a prayer only when the suit is likely to fail due to mis-joinder of parties, lack of statutory notice, improper valuation or similar procedural defects. In

the present case, no such defect is demonstrated. Mere assertion of a formal defect cannot justify granting liberty to file a fresh suit on the same cause of action.

4] As regards the contention that the judgment in R.C.S. No.199/2008 hampers the present suit due to non-joinder of necessary parties, if the plaintiff has any right, interest, or liability affected by that judgment, he may have an independent cause of action. According to the plaintiff, additional parties may need to be joined in view of the judgment in R.C.S. No.199/2008. Since the plaintiff is the *dominus litis*, he is free to join any person against whom he seeks relief. The Court cannot prevent the plaintiff from adding necessary or proper parties. Therefore, the contention that the decisions in R.C.S. No.199/2008 and R.C.S. No.1/2020 create a formal defect due to non-joinder of necessary parties is untenable. These are not formal defects within the meaning of law. The plaintiff is free to seek addition of necessary and proper parties in the present suit. Hence, the prayer for withdrawal of the suit on the ground of formal defect is unsustainable.

5] With respect to the stage of the matter, the plaintiff's evidence is nearly complete and three witnesses have already been examined. The defendants contend that they have obtained several admissions in cross-examination. If the plaintiff is permitted to withdraw the suit with liberty to file a fresh suit, the oral evidence already recorded may be rendered useless, thereby prejudicing valuable rights of the defendants.

Order XXIII Rule 1(3) of the CPC provides that:

“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 such suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit with liberty to institute a fresh suit.”

6] I have carefully considered the grounds raised by the plaintiff and find that they do not constitute a formal defect. Nor are there any sufficient grounds to justify granting liberty to institute a fresh suit on the same cause of action. The institution of R.C.S. No.1/2020 and the undertaking therein may, at best, give rise to a separate cause of action, but cannot be linked with the present suit so as to permit withdrawal with liberty. Therefore, in view of the facts and circumstances, I am inclined to pass the following order:

ORDER

1. Application at Exh.68 is hereby rejected .
2. The concerned clerk is directed to list the matter for cross-examination on Exh.66.
3. Costs in cause.

Place : Karmala
Date : 09.12.2025

[S.M.Ghuge]
Civil Judge, Senior Division,
Karmala, Dist.Solapur

CERTIFICATE

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

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Karmala
Date : 09-12-2025

Order/Judgment signed
by the Presiding Officer on : 09-12-2025

Order uploaded on : 12-12-2025