

ORDER BELOW EXH.56 IN R.C.S. NO. 223/2006

1. Perused application along with affidavit at Exh.57. I have gone through say filed by defendants at Exh.61. Perused record and proceedings.

2. Present application has been filed by the applicant who was earlier plaintiff no.1 in the present suit. According to her, she had filed the present suit against defendants for partition and separate possession of the suit properties by metes and bounds. It is also contended that she is illiterate person and cannot read and write. Therefore, taking disadvantage of her illiteracy, defendants no. 1 to 3 with their mala-fide intention entered into compromise and obtained her thumb impression of the same on 17/01/2011 and prayed for withdrawal of the suit to her extent.

3. It is further contended that the pursis at Exh. 54 which was filed in the court was prepared with the help of advocate of defendant no.1 and its contents were not read over to the applicant. So also defendants 1 to 3 fraudulently obtained her thumb impression on the pursis at Exh.54 and abandoned her claim which is contrary to the law and against interest of the present applicant.

Therefore the applicant has prayed for setting aside the order of withdrawal of suit in terms of pursis at Exh.54 and permission for conducting the suit afresh.

4. The opponents/defendants have strongly objected the present application. According to them, the present application is void-ab-initio and lacks legal sanctity. According to them, this court after fully satisfying itself regarding the contents of pursis at Exh.54 passed order below Exh.1 and thereby suit came to be withdrawing with respect to the present applicant and now the present application will not tenable. Hence, they have prayed for rejection of the application with costs.

5. Prima facie perusal of pursis at Exh. 54 reveals that the present applicant has withdrawn an abandon whole of her claim. Moreover, her thumb impression pursis at Exh.54 is duly identified by advocate Shri. Patil. Moreover, order dt. 17/01/2011 passed by my learned predecessor also reveals that he had satisfied himself that the suit was withdrawn to the extent of the present applicant voluntarily and accordingly permission was granted for withdrawal of the suit to the extent of the applicant.

6. Order 23 Rule 1 of C.P.C. provides that, 'at any time after institution of a suit, the plaintiff may as against all or any of the defendants abandon is or her suit or abandon part of his or her claim'. The provision is crystal clear that for that purpose, even the permission of the court is not at all necessary for withdrawn the suit unless the plaintiff wants to file the fresh suit in respect of same subject matter under Order 23 Rule 1(3) of C.P.C. Considering the admitted position of law and order passed by my learned predecessor on Exh.1 dt. 17/01/2011, it is crystal clear that the suit is withdrawing by the present applicant voluntarily and now again she cannot agitate her grievance before this court. Considering all these aspects, I find no substance in the application and same deserves to be rejected. Hence, I pass the following order.

ORDER

1. Application is rejected.
2. No order as to costs.
3. Matter to proceed accordingly.

Place : Karad
Date : 25.11.2013

(A.N. Kulkarni)
6th Jt. Civil Judge, Jr. Dn., Karad