

MHST140014092015 	<u>Reg. Civil Suit No. 189/2015</u> Hirabai Shinde V/s. Sharad Shinde.
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ORDER BELOW EXH.64

This is an application filed by plaintiff No.1 and 3 under O.23 R.1 of the C.P.C. application is supported by an affidavit.

2. It is submitted by plaintiff No.1 that, suit is filed for partition and separate possession. Suit property is ancestral property of plaintiff. Plaintiff No.1 is wife of deceased Rajendra Dagdu Shinde. Plaintiff no.2 and 3 are children of deceased Rajendra Dagdu Shinde. Suit is kept for hearing. During the pendency of suit there is compromise between plaintiff and defendant. The compromise pursis is filed on record. Plaintiff no.2 is handicapped by birth and she was kept in Anath Ashram at Madhya Pradesh. Plaintiff no.2 is legal heirs of deceased Rajendra Shinde. At the time of filing the suit plaintiff no.3 was handicapped. Thereafter, she was suffering from Lunatic. The suit is compromise between plaintiff and defendant therefore, all parties are necessary. As the plaintiff no.2 is handicapped and lunatic she unable to present before court therefore, compromise could not be held between parties. Suit was not filed as next friend on the behalf of plaintiff no.2. Plaintiff has filed separate application for appointment of next friend on the behalf of plaintiff no.2. Plaintiff prayed for permission to withdraw the suit on same cause of action.

3. Defendant filed their say below Exh.66 and submitted that, appropriate order may kindly be pass.

4. Perused the application and say. Heard. The plaintiff has filed this application under O.23 R.1 of C.P.C. This provision says about, *(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: **Provided** that, where the plaintiff is a minor or other person to whom the provisions contained in [rules 1 to 14 of Order XXXII](#) extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) 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 a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.*

(4) Where the plaintiff-

*(a) abandons any suit or part of claim under sub-rule (1), or
(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may*

award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

5. As per this provision the plaintiff abandoned a part of claim against defendant only. As per application plaintiff submitted that, plaintiff no.2 is suffering from lunatic. There is no document of record to show that plaintiff no.2 is suffering from lunatic during the pendency of suit. Moreover, perusal of plaint it shows that, plaintiff no.2 is major. The application is not signed by all plaintiffs. In such circumstances permission cannot be given to withdrawal of suit in the absency of remaining plaintiffs. In such circumstances, application is not tenable and liable to be rejected. Hence, I pass the following order.

ORDER

Application is hereby rejected.

Phaltan.

Date: 19.12.2024.

(P. H. Patil)

4th Jt. Civil Judge Jr. Dn. Phaltan.