

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.253/2021****Date of Decision: 28th November, 2025.**

Vijay Singh and Anr.Petitioners

Versus

Kulwant Singh. ...Respondent

Coram***The Hon'ble Mr. Justice Bipin Chander Negi, Judge.******Whether approved for reporting?¹***

For the Petitioners: Mr. Mahinder Verma, Advocate.

For the Respondent: Mr. Y.P. Sood, Advocate.

Bipin Chander Negi, Judge (oral).

The present petition has been preferred against the impugned order dated 16.09.2021, whereby an application filed under Order 23 sub-Rule 1 and Rule 3 CPC for withdrawal of the suit with liberty reserved to institute a fresh suit on the same cause of action, filed by the respondent/plaintiff has been allowed.

2. Heard counsel for the parties, perused the impugned order and the records appended along with the petition.

3. The predecessor-in-interest of the parties i.e. one Sh. Harish Chander was common to all. The respondent, in the case at hand, had filed a civil suit for partition and injunction against the present petitioners. He had claimed 1/5th share in the property. During the pendency of the suit, one Smt. Sunita Thakur and Smt. Suman Thakur, who



were parties to the initial lis as defendants No.2 and 3, by virtue of a relinquishment deed dated 03.11.2017, relinquished their share in favour of Smt. Shanti Devi i.e. present petitioner No.2.

4. Other than the aforesaid, during the pendency of the suit, Smt. Shanti Devi (petitioner No.2) had executed a family settlement deed dated 20.08.2020. The legality of the relinquishment deed and the family settlement entered into, was sought to be challenged by filing a fresh suit by the present respondent.

5. In reply to the application filed under Order 23 seeking withdrawal of the suit with liberty to institute a fresh suit based on the same cause of action, the aforesaid facts were admitted and it was pointed out that the present respondent had previously filed an application for deletion of name of Smt. Suman Thakur and Smt. Sunita Thakur on account of the relinquishment made by them in favour of Smt. Shanti Devi (petitioner No.2.). In the reply it was contended that despite the relinquishment and family arrangements made, present respondent would only be entitled to 1/5th share in the suit property, as was being claimed by him initially, when he filed the suit. It has further been contended in the reply that there exists no "formal defect" or "sufficient grounds" for allowing the



present respondent to withdraw the suit with liberty reserved to file a fresh on the same cause of action.

6. The sole consideration, which has weighed with the learned trial Court in permitting withdrawal of the suit filed by the present respondent and further reserving a liberty to file afresh suit on the same cause of action was that the suit was at its initial stage and the deeds i.e. relinquishment and family arrangement were being sought to be challenged by the present respondent in a comprehensive suit to avoid multiplicity of litigation. This was construed to the "sufficient ground" for permitting withdrawal of the suit filed by the respondent with liberty reserved to file afresh suit on the same cause of action.

7. In this respect, reference can be made to ***AIR 1999 Allahabad 109, titled Umesh Chandra Saxena and Ors. Vs. Administrator General, UP, Allahabad and Ors.*** The relevant extract is reproduced herein below:-

"29.....If the plaintiff thought it proper to consolidate all the claims to bring them under one suit to avoid multiplicity of litigation that would also be a sufficient ground as contemplated under Order 23, Rule 1 (3) (b), C. P. C. to allow withdrawal of the suit with liberty to file it afresh on the same cause of action or on some other cause or action."



7. In view of above stated position of law, I find no merit in the present petition and the same is dismissed accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of

(Bipin Chander Negi)
Judge

28th November, 2025
(Gaurav Rawat)