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**Lal Jan and others Vs Dosti Khan and others**

**Order..28**  
24.01.2023

Present:

Plaintiffs through attorney along with counsel.

Defendants No.03 in person and as attorney for defendant No.01 & 02.

This order is directed to dispose of the application for withdrawal of the instant suit with permission to file a fresh suit by plaintiffs.

Counsel for the plaintiffs submitted an application for the withdrawal of instant suit with permission to file a fresh one.

Arguments heard and record perused.


Plaintiff/petitioner has requested for withdrawal of the suit with permission to file a fresh one alleging that there is a formal defect in the suit to the effect that the plaintiffs in their plaint has not mentioned the shares of all share's holder in suit property. That the instant suit is not filed in representative capacity and that there is no mention of private partition between 06 families of Alaf Khel in the plaint.

Order XXIII, Rule 1 CPC empowers the plaintiffs to withdraw his suit at any time after the institution of the suit with permission to file a fresh one subject to satisfaction of the court. Suit of plaintiffs is for declaration cum-permanent injunction and recovery and as per plaint and documents annexed with the plaint, the formal defect brought in notice of the court by the plaintiffs is not curable by amendment in plaint. And this court of the view that there are incorrect averments in the plaint which amounts to formal defect and suit of plaintiff will ultimately fail by reason of this formal defect.

Keeping in view the formal defect in the suit, application for withdrawal of the suit with permission to file a fresh one is hereby accepted subject to cost of Rs.2000/-. Resultantly, suit in hand is **Dismissed** as withdrawn with permission to file a fresh one subject to all legal limitations.

File be consigned to record room after necessary completion and compilation.

**Announced**  
24.01.2023

  
**Sami Ullah**  
Civil Judge-I,  
Orakzai (at Baber Mela)