

Parties alongwith counsel present.

Through this single order I intend to dispose of an application filed under order XXIII Rule 1 CPC by plaintiffs for withdrawal of the suit with permission to file a fresh one. Defendants contested the application by filing reply and forwarding arguments thereto.

Arguments heard and record perused.

Petitioners/plaintiffs have filed the application for withdrawal of suit with permission to file a fresh suit stating that boundaries, necessary parties and area are not mentioned in the instant suit and eventually plaintiffs cannot succeeds in their suit. That this amounts to formal defect in the suit and lastly prayed for the acceptance of application.

On the other hand respondents/defendants strongly opposed the application and contended that there are no formal defects in the instant suit and lastly requested for dismissal of the application.

Order XXIII Rule 1 CPC empowers the plaintiffs to withdraw their suit at any time of the institution of the suit with permission to file a fresh one subject to formal defects and subject to satisfaction of the Court. Since boundaries, area and necessary parties are not mentioned in the instant suit which amounts to formal defect. More so, plaintiffs their-self states the instant suit as defective. As a result, suit of plaintiffs will ultimately fail by reasons of these formal defects.

Keeping in view formal defects in suit, application for the withdrawal of the suit with permission to file a fresh one is hereby **accepted** subject to cost of Rs: 5000/-. Resultantly suit in hand is dismissed as withdrawn with permission to file fresh suit subject to all legal limitations.

File be consigned to District Record Room, Orakzai, after its necessary completion and compilation.

R.S 5000/ Received by defendant no 2 wazir Jaffar (21603-7618716-3)