

Order No.02
08.11.2022

Plaintiff No. 1 for himself and special attorney for remaining plaintiffs along with counsel present. Counsel for plaintiffs submitted application for withdrawal of the suit with permission to file a fresh one. Defendants have already been placed and proceeded against ex-parte. Arguments heard and record perused.

Counsel for plaintiffs submitted application for withdrawal of the suit with permission to file a fresh one alleging that there are incorrect and incomplete averments in the plaint which amounts to formal defect in the suit and suit will ultimately fail by this reason of formal defect.

Order XXIII, Rule 1 CPC empowers the plaintiff to withdraw his suit at any time after the institution of the suit with permission to file a fresh one subject to formal defect and subject to satisfaction of the court. There are incorrect and incomplete averments in the plaint. That parents of some plaintiffs are alive but they have not been arrayed as party to the suit. Incorrect and incomplete averments of plaint amounts to formal defect and suit of plaintiff will ultimately fail by reason of this formal defect. Furthermore, full description of the suit property has not been mentioned in the plaint.

There is nothing in rebuttal due to ex-parte. Keeping in view 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Resultantly, suit in hand is dismissed as withdrawn with permission to file a fresh one subject to all legal limitations.

08/11/2022
ZAHIR KHAN
Civil Judge, JMI
Kalaya Orakzai

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

Announced.
08.11.2022



Zahir Khan
Civil Judge-I, Kalaya, Orakzai