

Order No.12
30.07.2022

Parties along with counsel present. Reply to the application filed by petitioner/plaintiff for withdrawal of the suit with permission to file a fresh one submitted. Arguments of counsel for plaintiff/petitioner already heard.

Arguments of counsel for respondent/defendant heard and record gone through.

Petitioner/plaintiff has filed application for withdrawal of the suit with permission to file a fresh one alleging that full description of suit property is not provided in the plaint and that the Jirga decisions in favour of petitioner/plaintiff and agreements supportive to his claim have not been averred in the plaint. He has further contended that there are some incomplete and incorrect averments in the plaint with amounts to formal defect in the suit.

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 and full description of suit

property is not provided in the plaint. This fact is also admitted by

respondent/defendant in Para 2 of the replication. Incorrect and incomplete

averments of plaint amounts to formal defect and suit of plaintiffs will

ultimately fail by reason of this formal defect.

JM

30/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

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. 5000/-. Resultantly, suit in hand is dismissed as withdrawn with permission to file a fresh one subject to all legal limitations within 10 days.

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

Announced.
30.07.2022



Zahir Khan
Civil Judge-I, Kalaya, Orakzai