

Order No.15

15.08.2022

Plaintiffs along with counsel present. Defendant No. 5 present.

This order of mine is intended to dispose of application for withdrawal of the suit with permission to file a fresh one filed on 30.07.2022. Learned counsel for defendants conceded the same by marking no objection on acceptance of the application. Arguments already heard and record perused.

Petitioners/plaintiffs have filed application for withdrawal of the suit with permission to file a fresh one alleging that father of plaintiff No. 1 is alive but he is not party to the suit and that all the LRs of deceased namely Syed Abbas Jan (father of plaintiff No. 2) have not been arrayed as party to the suit. He has further contended that there are some incomplete and incorrect averments in the plaint which 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. Father of

ZAHIR KHAN**Civil Judge, III
Kalaya Orakzai**

plaintiff No. 1 is alive but he is not arrayed as party to the suit. There are

incorrect and incomplete averments in the plaint. This fact is also admitted

by respondents/defendants 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.

Keeping in view formal defect in the suit and no objection of learned counsel for defendants/respondents, 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 Resultantly, suit in hand is dismissed as withdrawn with permission to file a fresh one subject to all legal limitations within 10 days.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.
15.08.2022



Zahir Khan
Civil Judge-I, Kalaya, Orakzai