

(1985) 02 KAR CK 0005
In the Karnataka High Court
Case No : CRP No. 2747 of 1981

Chikka Kadirappa

APPELLANT

Vs

Erappa and Others

RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule1 (5)

Citation : (1985) ILR (Kar) 1634

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : C.B. Srinivasan, for the Appellant;

Final Decision : Allowed

Judgement

Kulkarni, J.—This is a plaintiff-1's revision against the order dated 24-7-1981 passed by the Munsiff, Chikballapur, in O.S. No. 122 of 1973 allowing plaintiff - 3 to withdraw the suit.

2. The three plaintiffs jointly filed a suit for declaration of title to the suit schedule properties and for permanent injunction. An interim application was filed by plaintiff - 3 under Order 23 Rule 1 C.P.C. seeking permission to withdraw the suit. The Trial Court granted the same. Hence the revision by the present plaintiff-1.

3. The order sheet dated 24-7-1981 reads as :

"The plaintiff by Sri K.S.R. Defendant by Sri S.P.G. Objections not filed. Plaintiffs-1 and 2 absent. Sri K.S.R. for plaintiffs absent. Sri M.A. for K.S.R. prays for time. His prayer rejected.

Heard. Perused the I.A. and affidavit. For the reasons stated in the petition, 3rd plaintiff" is permitted to withdraw the suit against defendants. Hence this suit by 3rd plaintiff stands dismissed only against defendant.

Additional reply not filed. To hear on additional issues by 13-8."

When one lawyer by name Sri M.A. for K S.R. Advocate for plaintiffs-1 and 2 prayed for time, the lower Court ought not to have hurriedly rejected the claim. Order 23 Rule 1(5) C.P.C. says as :

"Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw under sub rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

It was impermissible for the Court below to grant the permission to withdraw the suit without ascertaining as to whether the other plaintiffs consented to it or not. When a prayer was made by the proxy lawyer M.A. for K.S.R. for plaintiffs-1 and 2 for time, the lower Court ought not to have rejected it. It at least ought to have ascertained from him whether plaintiffs-1 and 2 consented to such a matter.

4. Therefore, under these circumstances, the order passed by the Court below granting permission to plaintiff-3 to withdraw the suit, is set aside. The revision is allowed.