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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1800 OF 2012

WITH

NOTICE OF MOTION NO. 1898 OF 2012

IN

SUIT NO. 1800 OF 2012

Salim Khan Babu Khan & Ors. ...Plaintiffs

vs

Vasudev Ramji Keni & Ors. ...Defendants

.....

Mr D.S.Sabnis a/w Mr Abhijit Singh I/b Mr Ram Laxmipalli for the Plaintiffs

Mr S.B.Amin for Defendant Nos.1 to 3.

Mr R.M. Pandey for Defendant No.5.

Dhanappa
I. Koshti

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Dhanappa I. Koshti
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**CORAM : B. P. COLABAWALLA, J.
JULY 17, 2019.**

P.C. :

When this matter was called out, the learned advocate appearing on behalf of the plaintiffs fairly conceded that the reliefs sought in this suit cannot be granted in view of the fact that the plaintiffs cannot claim a declaration of the title on the basis of adverse possession. He pointed out that the defendants herein have also filed a counter-claim in the present suit in which he would like to take up those contentions as a defence to the counter-claim.

2 In these circumstances, he on the instructions of the plaintiffs, who are present in the Court, sought leave to withdraw the present suit with a liberty to take up the aforesaid defences in the

counter-claim filed by the defendants.

3 In these circumstances, the suit is dismissed with liberty as prayed. No order as to costs. Refund of court fees, if any, as per rules.

4 It is clarified that in the counter-claim filed by the defendants, the plaintiffs shall be entitled to take up the defence that they have become the owner of the suit property by adverse possession. If this contention is raised, it shall be decided on its own merits and in accordance with law.

5 The learned advocate appearing on behalf of the plaintiffs herein has further made a statement that if they choose to file any interim application either in the counter-claim or in any other proceedings that they choose to file, they shall give at least 48 hours notice to the defendants herein. The said statement is accepted.

6 In view of withdrawal of the suit, nothing survives in Notice of Motion No. 1898 of 2012 and the same is disposed of accordingly. No order as to costs.

(B.P.COLABAWALLA, J.)