

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.92 of 2018**

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Allauddin Mian @ Md. Allauddin Son of late Sarfuddin Mian Resident of  
Mohalla- Ramna Jolha Toli, Sherghati, P.S. Sherghati, District- Gaya.

... .. Petitioner/s

Versus

1. Ram Jeet Singh
2. Jagdip Singh Both Sons of late Deonandan Singh Resident of Village-  
Ghanghri, P.S. Sherghati, District Gaya.
3. Roji Main Son of late Sabrati Mian
4. Khurshid Mian Son of Rojid Mian Both Resident of Mohalla- Piparpanti  
Sherghati, P.S. Sherghati, District- Gaya.
5. Bibi Bano Khatoon Wife of Allauddin Mian Resident of Mohalla- Ramua,  
Jolha Toli Sherghati, P.S. Sherghati, District- Gaya.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Arun Kumar Sinha, Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

3      03-08-2022                      Heard Mr. Arun Kumar Sinha, learned counsel for  
the petitioner.

2. Petitioner/plaintiff has challenged the order dated  
28.11.2017 passed by the learned Sub-Judge- 1<sup>st</sup> , Sherghati,  
Gaya in Title Suit No. 458 of 2015/314 of 2008 by which the  
application filed by the petitioner under Order 23 Rule 3 CPC  
for withdrawal of the suit with liberty to file a fresh suit has  
been rejected.

3. A suit bearing Title Suit No. 458 of 2015/314 of  
2008 was filed by the petitioner/plaintiff for declaration of title  
upon the suit land detailed at Schedule-A and C of the plaint  
along with other reliefs. The petition under Order 23 Rule 3 of  
the CPC was filed on 07.02.2017 by the petitioner before the



trial court for withdrawal of the suit *inter alia* on the ground that the plaint filed by the plaintiff suffers from absence of the material fact, necessary and proper parties as well as suffers from vagueness of the suit land. Further the plaintiffs stated in his petition for withdrawal that in absence of material and required facts, the plaint became defective and it cannot be possible to cure the defective plaint by seeking amendment. Due to lack of material facts in the plaint the suit will fail. Accordingly, the prayer was made for withdrawal of the suit with liberty to institute a fresh suit.

4. Learned counsel for the petitioner relies upon a judgment of Hon'ble Apex Court passed in the case of **Anil Kumar Singh v. Vijay Pal Singh & Ors** reported in **AIR 2017 SC 5587** and submits that the withdrawal of the suit should normally be allowed. He refers to paragraphs 24, 25 and 26 of the said judgment which are quoted hereinbelow:-

“24. In our considered opinion, when the Plaintiff files an application Under Order XXIII Rule 1 and prays for permission to withdraw the suit, whether in full or part, he is always at liberty to do so and in such case, the Defendant has no right to raise any objection to such prayer being made by the Plaintiff except to ask for payment of the cost to him by the Plaintiff as provided in Sub-rule (4).

25. The reason is that while making a prayer to withdraw the suit Under Rule 1(1), the Plaintiff does not ask for any leave to file a fresh



suit on the same subject matter. A mere withdrawal of the suit without asking for anything more can, therefore, be always permitted. In other words, the Defendant has no right to compel the Plaintiff to prosecute the suit by opposing the withdrawal of suit sought by the Plaintiff except to claim the cost for filing a suit against him.

26. However, when the Plaintiff applies for withdrawal of the suit along with a prayer to grant him permission to file a fresh suit on the same subject matter as provided in Sub-rule (3) of Rule 1 then in such event, the Defendant can object to such prayer made by the Plaintiff. In such event, it is for the Court to decide as to whether the permission to seek withdrawal of the suit should be granted to the Plaintiff and, if so, on what terms as provided in Sub-rule (3) of Rule 1.”

5. From perusal of the judgment (supra), it appears that the Hon’ble Supreme Court has held that if withdrawal of the suit along with the prayer to grant permission to file fresh suit on the same subject matter is made, then in such an event, the defendant can object to such prayer made by the plaintiff and it is for Court to decide as to whether the permission to seek withdrawal of the suit should be granted to the plaintiff and, if so, on what terms as provided in sub-rule (3) of Rule 1.

6. A reply/rejoinder to the petition dated 07.02.2017 was filed by the defendant objecting the prayer of withdrawal with liberty to file fresh suit *inter alia* stating that the instant suit is very old, was filed in 2008 and the parties to the suit have



already adduced their evidences and the suit is posted for final argument. It has further been stated that plaintiffs have never acquired title or possession over the suit land and there is no formal defect in the suit and rather suit is devoid of merit, as such, the plaintiffs with *mala fide* motive want to withdraw the suit at the stage of final argument.

7. From perusal of the impugned order, it appears that the trial of the suit commenced much earlier and both the parties adduced their oral as well as documentary evidence and their evidences were closed. After closure of the evidence, a petition has been filed for withdrawal of the suit with liberty to file a fresh suit by the plaintiffs which has been vehemently objected by the defendants.

8. Taking into consideration the materials on record and the stage at which the withdrawal petition has been filed, I am of the opinion that the petition for withdrawal of the suit filed by the petitioner/plaintiff is not *bona fide*. Accordingly, the impugned order does not require any interference by this Court. This application is dismissed.

**(Anil Kumar Sinha, J)**

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