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N.SESHASAYEE, J.

The defendants 1 to 3 are the owners of the suit property and they have entered into a sale agreement with the plaintiff and for invocation of which, the present suit is laid.

2. The fourth defendant is stated to be the power of attorney agent of defendants 1 to 3. In the suit, the plaintiff had made a statement that the fourth defendant has been impleaded only formally. Indeed, the plaintiff has not sought any relief as against the fourth defendant. Subsequently, for not taking summons to the fourth defendant, the suit came to be dismissed for default as against the fourth defendant.

3. The instant application is now taken up by the fourth defendant on the ground that, he as the power of attorney holder of defendants 1 to 3, had paid certain amounts to them and that subsequently, a tripartite agreement came into existence between the plaintiff on one part, defendants 1 to 3 on the other part and himself on a third part and by which, the fourth defendant had been paid part of the amount he has paid to defendants 1 to 3.



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4. The plaintiff as *dominus litis*, is free to choose his defendant and if he does not want to proceed against the certain defendant and allows the suit to be dismissed as against that defendant, it is not given to that defendant to seek restoration of the suit as against him. He has to take proper recourse to other methods for protecting his interest. This court does not see any merit in this application. Accordingly, the application is dismissed.

21.12.2022

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