

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.54 of 2013

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Laxman Raut, Son of Late Bhagwat Raut, Resident of Village- Siwan Tola
Ramnagar, Police Station- Siwan, District- Siwan.

... .. Petitioner/s

Versus

1. Bhola Raut S/O Late Sakhichand Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
2. Sukath Raut S/O Late Gopi Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
3. Chandrama Raut S/O Late Gopi Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
4. Bacha Raut S/O Late Ramlochan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
5. Radhe Raut S/O Ramjitan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
6. Bageru Raut S/O Ramjitan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 7.1. Bije Raut, Son of Late Chandrika Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
8. Shambhu Raut S/O Ramjitan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
9. Chhathila Raut S/O Satan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 9.1. Ramadhar Raut S/O Satan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
10. Achhelal Raut S/O Satan Raut Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 11.1. Shibu Grand Son of late Mangani Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
13. Harishanker Prasad S/O Late Bhadur Prasad Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
14. Umashanker Prasad S/O Late Bhadur Prasad Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 16.1. Birendra Raut, Son of Late Bihari Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
- 16.2. Raja Babu, Son of Late Bihari Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
- 16.3. Upendra Raut, Son of Late Bihari Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
19. Ajayshanker S/O Dharmnath Kurmi Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.



20. Umesh Shanker S/O Dharmnath Kurmi Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 21.1. Dharurnath Kuar, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 22.1. Suresh Prasad, Son of Late Fuleshwar Prasad, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 22.2. Birendra Pd. Son of Late Fuleshwar Prasad, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 22.3. Jitendra Prasad, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 23.1. Babu Upadhyay, Son of late Nand Kumar Upadhyay Resident of Village- Siwan tola Ramnagar, Police Station- Siwan.
- 23.2. Navin Upadhyay, Son of Late Nand Kumar Upadhyay Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 23.3. Chandan Upadhyay, Son of Late Nand Kumar Uapdhyay, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 24.1. Shuresh Singh, Son of Late Bashdeo Singh, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 24.2. Awdhesh Singh, Son of Bashdeo Singh, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 24.3. Dhaneshwar Singh, Son of Late Bashdeo Singh, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 25.1. Suresh Singh, Son of Late Rampati Kuar, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 25.2. Awdesh Singh, Son of Late Rampati Kuar, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 25.3. Dhaneshwar Singh, Son of Late Rampati Kuar, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
26. Chandeshwar Dom, S/O Swarath Dom Resident Of Village- Siwan Tola Ramnagar, Police Station- Siwan, District- Siwan.
- 27.1. Sudama Pd. Son of Late Laichi, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan.
- 28.1. Vidya Chaudhary, Son of Late Jagranath Chaudhari, Resident of Village- Siwan Tola Ramnagar, Police Station-Siwan, District-Siwan.
- 28.2. Keshu Chaudhary, Son of Late Jagranath Chaudhari, Resident of Village- Siwan Tola Ramnagar, Police Station-Siwan, District-Siwan.
- 29.1. Awdhesh Singh, Son of Satdeo Singh, Resident of Village- Paigamberpur, Police Station-Siwan, District- Siwan.
- 30.1. Ajit Kumar, Son of Late Ramayan Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
- 30.2. Sujit Kumar, Son of Late Ramayan Raut, Resident of Village- Siwan Tola Ramnagar, Police Station- Siwan, District-Siwan.
- 31.1. Asha Devi, Wife of Late Umashanker Raut, Resident of Village- Siwan



Tola Ramnagar, Police Station- Siwan, District-Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Advocate Ms. Prem Sheela Pandey, Advocate Mr. Vikas Kumar Jha, Advocate
For the Respondent/s	:	Mr. Udit Narayan Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 22-09-2025

Heard learned counsel on behalf of petitioner and
learned counsel for the respondents.

2. The present Civil revision has been filed
against the order dated 22.12.2012 passed by learned Sub-
Judge-VIII, Siwan in T.S. No. 340 of 1985 whereby and where
under he has pleased to allow the petition dated 09.03.2005 filed
by the defendant no. 32 and suit was disposed of.

3. Learned counsel for the petitioner submits that
after summons in the Title suit, defendants had appeared and
filed their respective written statement at the stage where the
suit was admitted. Further defendant no. 32 filed a petition
under Section 10 of the CPC for maintainability of the suit on
29.11.2004 and on 03.03.2005. He further submitted that earlier
petitioner filed an earlier suit bearing no. 160 of 1979 which
was withdrawn with the permission of the Court and liberty was
given to the petitioner to file fresh suit with the cost of Rs.



232/- . He further submitted that the permission need not be in express terms as it is clear from the records that petitioner was permitted to withdraw the suit and permission was granted to file a fresh suit vide order dated 16.07.1984. He further submitted that learned trial Court erred in allowing the defendant no. 32 application and disposing the suit without applying his judicial mind.

4. Learned counsel for the respondents submits that petitioner filed a Title Suit No. 160 of 1979 before Sub-Judge, Siwan and subsequently the said suit was withdrawn by the petitioner but permission to file a fresh suit was not granted. He further submitted that on the basis of law laid down by several judicial pronouncement, order dated 22.12.2012 passed by learned Sub-Judge-VIII, Siwan is perfectly correct and therefore the present civil revision is fit to be dismissed.

5. On perusal of materials available on record and relief portion of the application dated 16.07.1985 under Order 23 Rule 1 of the CPC for withdrawal of the Title Suit No. 160 of 1979 which is as follows:

“इसलिये निवेदन है कि मुद्दई को मोकदमा उठा लेने के लिये आदेश दिया जाय और चूंके बासदेव सिंह मुद्दई को धोखा देकर गलत बटवारा का मोकदमा दायर करा दिया है। इसेलिये खर्चा से बरी किया जाय वो मुद्दई को उस जायदाद के निसवत दूसरा मोकदमा दायर करने के लिये एजाजत दिया जाय।”



It is evident to note that to withdraw the suit under Order 23 Rule 1 of the CPC with liberty to institute a fresh suit on the same subject matter has got to be treated as an indivisible whole and the Court cannot split up the prayer while refusing permission to institute a fresh suit and that it could not treat the application to be one under Order 23 Rule 1 of the Code for withdrawal of the suit simpliciter and, as such, the order allowing the application without expressly granting or refusing permission to institute a fresh suit is to be taken to have been passed granting the composite prayer made in the application under Order 23 Rule 1 of the Code, under which an order either allowing the application in *toto* or rejecting it in *toto*, could alone be legally passed by the Court. Therefore, when an application moved under Order 23 Rule 1 is allowed there is no escape from the conclusion that the prayer made in the application has been allowed in *toto* although no specific order is passed granting permission to institute fresh suit in respect of same subject matter and on the same cause of action.

6. Order XXIII Rule 1(3) CPC lays down following grounds on which a Court may allow withdrawal of suit. It reads as under:

"Rule. 1. Withdrawal of suit or abandonment of part of claim.-



*(3) Where the Court is satisfied.-
(a) that a suit must fail by reason of some formal defect, or
(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,
it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*

7. On perusal of the relevant order dated passed in Title Suit No. 160 of 1979 which is as follows:

“61/29-7-85 उभय पक्ष उपस्थिति पत्र दिए। वादी के द्वारा दाखिल दिनांक 16.7.84 का आवेदन प्रस्तावित एवं प्रस्तुत हुआ। उभय पक्ष के अधिवक्ता को सुना। वादी का आवेदन मो० 32 मो० खर्चा पर मंजूर हुआ दि० 10.8.85 तक वादी उपरोक्त खर्च अदा करे तत्पश्चात वाद withdraw समझा जायेगा।
62/10-8-85 वादी द्वारा उपरोक्त खर्चा मो० 32 रुपया अदा हुआ। वाद वादी के प्रार्थनानुसार उठाने को अनुमती दी गई।”

An application for withdrawal of suit was made by the petitioner seeking liberty to file a fresh suit. The order passed by the Court was that ‘The application is therefore allowed while permitting the plaintiff to withdraw’. It was held that this should be construed as an order also granting liberty, as prayed. The Court cannot split the prayer made by the petitioner. It would indicate that nowhere in the order the learned Sub-Judge expressly rejected the prayer for permission for filing fresh suit. In the operative portion of the order and the application has been



allowed without any reservation. This Court is of the opinion that the said order is to be construed as to granting the prayer contained in the application as a whole and the plaintiff-petitioner has rightly filed the present suit in respect of the same subject matter and on the same cause of action. The learned Trial Court has erred in holding that the present suit filed by the plaintiff was barred by Order 23 Rule 1(4) of the CPC.

8. In *Sukumar Banerjee v. Dilip Kumar Sarkar*, *AIR 1982 Calcutta 17*, it was held that where the plaintiff files an application to withdraw from the suit with liberty to sue afresh and the Court passes an order giving permission to withdraw the suit but nothing is said in the order regarding plaintiff's liberty to institute a fresh suit on the same cause of action, the order has to be read as granting permission to the plaintiff to sue afresh on the same cause of action.

9. In *Khudi Rai v. Lalo Rai* reported in *AIR 1926 Pat 259*, Hon'ble Patna High Court held that:

“Where an application is made by a plaintiff to withdraw a suit with liberty to bring a fresh suit on the same cause of action and an order is passed giving permission to withdraw, the suit although nothing is said in the order as to the plaintiff's right to institute a fresh suit, the order should be read along with the petition and construed as granting permission to institute a fresh suit.”



So, considering all the materials available on record and in the aforesaid background, this Court, therefore, does find that the learned Trial Court has committed error while disposing off the suit. Accordingly, the Civil Revision is allowed setting aside the impugned order passed by learned Sub-Judge-VIII, Siwan.

10. Learned Trial Court is directed to decide said Title Suit No. 340 of 1985 on merit in accordance with law.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
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