

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 68 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JYOTINDRA BABUBHAI PATEL

Versus

UNION OF INDIA

Appearance:

MR PK JANI for Petitioner

MR. P.J. Vyas for Respondents No. 7 to 13

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 29/02/96

ORAL JUDGEMENT

1. RULE. Mr. P.J. Vyas waives service of rule on
behalf of Respondents No.7 to 13. With the consent of the
learned advocates appearing for the parties, the matter is
finally heard today. Rest of the respondents being

non-contesting parties are ordered to be deleted.

2. By this Civil Revision Application, the petitioner has challenged the legality and validity of the order passed below Exhibit 130 dated 4th November, 1995 in Regular Civil Suit No. 39 of 1989 by the learned Civil Judge (S.D.), Mehsana. It appears that the suit was filed by three plaintiffs - one of them being partnership firm and rest of them being the partners and heirs and legal representatives of the deceased partners. The suit was filed against number of defendants. In fact, in the cause title of the suit, the partnership firm is stated to be represented by plaintiffs No. 1/1 to 1/4, plaintiff No.2 and plaintiff No.3 and there are in all 13 defendants. The defendants No. 7 to 13 are represented by Mr. P.J. Vyas, who are contesting the present civil Revision Application.

3. It appears that during the pendency of this proceeding before the trial court, an application was given by plaintiff No. 1/4 stating that he was holding power of attorney for rest of the plaintiffs and that he has authority to withdraw the suit. The trial court has on such application stated that since there is settlement of dispute outside the court between the plaintiff and defendants No. 7 to 13 and since the plaintiff want to withdraw the suit, the permission is granted. Such order is passed by the trial court on 4th of November, 1995 and he has recorded the withdrawal of the suit. The trial court has not ascertained the wishes of all the plaintiffs in the plaint who were not present in the court. The trial court has also not ascertained as to whether plaintiff No. 1/4 has any power of attorney in his favour and as to whether he could be permitted to withdraw the suit when other plaintiffs were not before the trial court. The trial court has not heard the defendants No. 1 to 6 and on agreement of defendants No. 7 to 13, passed the impugned order. It is such order which is under challenge before this Court.

4. In view of the provisions of Order 23 Rule 1(5) of the C.P. Code, the order of the trial court is untenable in law and is expressly against the statutory provisions. Order 23 Rule 1(5) reads as under:

"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."

5. The trial court has unfortunately not taken the

trouble to read and apply the provision of law. It has simply proceeded to get the disposal of the suit. To say the least, the order of the trial court is highly perfunctory and is required to be deprecated. The said order is hereby quashed and set aside and the suit is required to be directed to be taken on file and the trial court is directed to decide the same in accordance with law. Rule is accordingly made absolute.
