

**Dated 21.12.2021**

Plaintiff is represented.

The plaintiff side filed one petition being No.3206/2021 stating that the earlier advocate Smt. Lashmi Rekha Borgohain could not attend the court due to her new born baby and she handed over the brief of the case to the present conducting advocate Smt. Mayuri Saikia Konwar and while preparing the argument, the conducting advocate noticed that The Registrar Office Assam Co. India is a necessary party and hence prayed to allow to withdraw the present suit with a liberty to file a fresh suit for proper adjudication for the case.

On perusal of case record it appears the the instant suit is filed for declaration of rights, title and interest and for correction of records of rights.

The suit already proceeding ex-parte against the present defendant i.e. Borbaruah Tea Estate.

Heard the petitioner at length.

**Order XXIII speaks about withdrawal and adjustment of suits.**

**1. Withdrawal of suit or abandonment of part of claim-**

(1) At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.

Provided that...

(2) An application ...

(3) Where the Court is satisfied-

(a) that a suit must fail by reason of some formal defect, or

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(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 things 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.

On perusal of case record it appears that the case is pending at the stage of argument. But it appears that from para No.2 of the plaint the suit land has been recorded in the name of Upper Assam Tea Company (erstwhile), now Assam Co. Indian Ltd. and Borbaruah Tea Estate is a unit Garden of Assam Co. Indian Ltd. The said company has not made party to the suit.

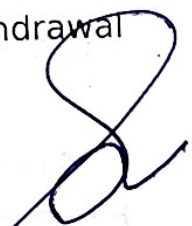
Therefore, it is evident that the case is proceeded almost at the verge of its completion and now the plaintiff has decided to withdraw the same with leave of the Court to file a fresh suit.

The Court after hearing the plaintiff satisfied that there is some formal defect which need to be rectified by the plaintiff in order to proceed further.

Therefore, the petition No.3206/21 is hereby allowed with a liberty to file fresh suit on same cause of action.

As there is no other side, the Court is not imposing any cost.

This case is disposed of on withdrawal accordingly.

  
Munsiff No. 4  
Dibrugarh,