

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1786 of 1998 (O&M)

Date of decision: 01.07.2015

Sukhdev Singh and others

.... Petitioners

versus

Bawa Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. G.K. Mann, Advocate,
for the petitioners.

None for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision is against the order allowing in part the request for withdrawal by declining the liberty sought for filing a fresh case on the same cause of action. The defendant, who was successful in the trial Court and who was the respondent in appeal, is the revision petitioner before this court.

2. In a suit for declaration that the plaintiff is the owner in possession of the house, the defendant's contention was that he had already sold a portion of the property which was vacant in favour of

the plaintiff and had retained the remaining portion over which a construction had been made and he was residing therein. The trial Court framed an issue relating to the validity of the sale in favour of the plaintiff of 12 marlas of land and also framed an issue on the substantial questions raised on whether the plaintiff was the owner in possession of the residential house in a portion of the property. The court found the sale in favour of the plaintiff to be true but denied the declaratory relief in relation to the house holding that the defendant was in possession of the house in his own right and that the plaintiff cannot succeed without proving his own possession. The correctness of this judgment was challenged in appeal and the plaintiff/appellant had applied for withdrawal of the suit and appeal with liberty to file a fresh suit. The respondent in appeal and the present petitioner herein were served with notice but did not file any objection. The appellate Court all the same declined the relief of liberty to file a fresh suit and allowed for withdrawal of the appeal in the suit. It is against this judgment that the respondent before the court below has preferred the revision petition.

3. The learned counsel for the petitioner would contend that the benefit of the findings of the trial Court is effaced by the order of the lower court permitting the withdrawal. The court ought not to have allowed the withdrawal of the suit at the appellate stage.

4. It is too well laid down a proposition to doubt that the provisions of Order 23 Rule 1 CPC are applicable as much to the trial Court as to the appellate Court. Any appeal is a continuation of the proceedings in suit and there cannot arise any tenable objection regarding the maintainability of the petition before the court or the jurisdiction exercised by the court below. However, if the permission to file a fresh suit on the same cause of action was required to be considered, the consideration shall be on the touchstone of the requirements of law under Order 23 Rule 1(3) CPC. The section sets out two requirements either there is a formal defect in frame of suit or that there are sufficient grounds for allowing the plaintiff to institute fresh suit. If the court was not granting such liberty for whatever reason, then a withdrawal without liberty would mean that the plaintiff cannot take away any right in respect of the same property which was successfully contested by the defendant. In other words, the defendant cannot be put to any prejudice by allowing for withdrawal of the appeal and suit.

5. I have read the judgment of the trial Court as well. The court has found that the house property is in possession of the defendant and declined the relief of declaration. Between the same parties, it would be conclusive irrespective of the fact that the plaintiff has allowed to withdraw suit and appeal by the fact that the plaintiff or any person claiming under him shall at all times be

precluded from instituting any suit in relation to the same property against the defendant or the successor in interest by virtue of Order 23 Rule 1(4) CPC.

6. Under the circumstances, I do not find that there is any warrant for interference. The revision petition is dismissed.

(K.KANNAN)
JUDGE

01.07.2015
sanjeev