

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1290 of 2015
Date of decision: 23.02.2015

Avtar Singh

....Petitioner

Versus

Sucha Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. I.S.Brar, Advocate for the petitioner.

G.S.Sandhawal J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India filed by the petitioner-plaintiff is to the order dated 2.2.2015 (Annexure P/2) passed by the Addl. Civil Judge (Senior Division), Faridkot whereby the application under Order 23 Rule 1 CPC seeking permission to withdraw the suit with permission to file fresh suit in respect of the subject matter of the suit on the same cause of action has been declined.

Admittedly, the suit for mandatory injunction for restoring the public street in question which had been encroached upon by the respondents who had amalgamated the same in their property was filed on 10.5.2010. Issues were framed on 3.11.2010 and the plaintiff led his evidence but on having been failed to conclude the same, he has filed the present application alleging that since one Mulkh Raj Pandit has encroached upon 1.33 marla of street land and he was necessary party and therefore, permission be granted to withdraw the suit.

The trial Court has dismissed the application noticing that there is no technical defect and the plaintiff has not concluded his evidence and last opportunity has been granted. Admittedly the cause of action against the present respondents subsists as such and merely because some more information has come to the knowledge of the plaintiff regarding encroachment by another person would not render the suit to be suffering from technical defect

which would entitle him to withdraw the said suit and file a fresh one on the same cause of action. As noticed the suit has been pending for almost last five years and to give liberty to the plaintiff again to file a fresh suit would amount to causing harassment to other side as fresh defence has to be filed again. In such circumstances, the order dated 2.2.2015 (Annexure P/2) does not suffer from any infirmity which would warrant interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

Accordingly, the present revision petition is dismissed.

23.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE