

CR-1784-2015 (O&M)

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

**CR-1784-2015 (O&M).
Decided on: July 17, 2015.**

Pawan Kumar

..... Petitioner(s)

Versus

Madan Singh and others

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.J.P.Sharma, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL)

Vide impugned order dated 12.9.2014, Annexure P3, the trial Court has permitted the plaintiffs-respondents to withdraw the suit with liberty to file a fresh suit by allowing the application wherein it is mentioned that one Subhash Chand who is a necessary party having not been impleaded, the plaintiffs want to withdraw the suit without surrendering their legal rights in the property.

Counsel for the petitioner has vehemently contended that the suit was filed in the year 2008 and it continued till 2014 and has been permitted to be withdrawn at final stage as the plaintiffs apprehended dismissal of the suit. He claims that had the suit been decided, the subsequent suit would be barred under Order II Rule 2 Rule CPC and the legal rights accrued to the defendant have been seriously prejudiced.

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I have heard counsel for the petitioner and gone through the nature of the suit filed by the plaintiff-respondents. Plaintiffs have filed a suit for possession of the suit property besides seeking a declaration that the sale deed in favour of ancestors of defendant Nos. 1 to 3 was liable to be cancelled.

Without expression of any opinion on merits, I am of the considered opinion that it is always open to a party to abandon or waive of his rights but granting of permission to withdraw the same might cause prejudice to the opposite party who has contested the suit for a long period.

I do not intend to interfere in the impugned order. However, it is clarified that rights of the defendant to challenge the fresh suit on the same cause of action or on the ground of limitation and other legal pleas would not be affected. All pleas taken up in this petition could be taken up by him in case the second suit is filed.

Disposed of with above observations.

July 17, 2015.
rka

(M.M.S. BEDI)
JUDGE