

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

CR No.2232 of 2013 (O&M)

Date of decision: 26.11.2015

Mal Singh @ Bhalle Ram (died) through LRs and others

... Petitioners

versus

Raghbir and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.S.Sindhu, Advocate for the petitioners.

Mr. A.K.Goyat, Advocate for respondents No.39, 41, 45,
49, 50, 55 to 58, 60, 64, 73, 80, 82, 88 to 92, 94,103 & 121.

K.Kannan, J.(Oral)

Petition for withdrawal of the suit with liberty to file a fresh suit was filed by the plaintiff on the alleged ground that suit suffered from some formal defect in pleadings relating to a past transaction and therefore, he should have liberty of bringing a fresh suit on the same cause of action. The defendant took an objection that the trial had gone through its entire gamut and there is no formal defect for allowing the plaintiff to withdraw the same with liberty as sought for.

The Court found that there was no formal defect and allowed only the relief of withdrawal and dismissed with liberty. This order is challenged in revision.

The order passed is erroneous and cannot be supported in law. If the Court found that there was no formal defect it can only dismiss the application and allow for continuance of trial. There was no half way order possible only for withdrawal and decline the liberty. This order will have serious repercussion to constitute an abandonment of action under Order 23 Rule 1 CPC and dis-empowering the plaintiff to agitate his claim in relation to the property at all times in future. If the plaintiff could not be favoured with the liberty it should have only dismissed the petition and not allowed merely for the provision of withdrawal.

Learned counsel states that he will not press on the issue of formal defect and carry on with the suit. The plaintiff will have such liberty and the evidence brought on record will not be required to be re-opened. The case will progress from the stage just before the time when the application was filed for withdrawal with liberty.

The impugned order is set aside. Civil Revision is allowed.

No costs.

(K.KANNAN)
JUDGE

26.11.2015
Meenu