

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

CR No. 2548 of 2013 (O&M)
Date of decision: May 19, 2015

Balwinder Singh

...Petitioner

Versus

Balwinder Kaur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. KS Chahal, Advocate,
for the petitioner.

Mr. Sanjiv Gupta, Advocate,
for respondent No.2.

K. KANNAN, J. (Oral)

1. The order passed by the court below is patently wrong and erroneous. The plaintiffs suit for declaration and injunction and set forth a plea that they got a right to the property by adverse possession they are advised to state that such a plea of adverse possession cannot be persisted. It will be open for them to give up such a plea and seek for the relief of injunction only. An abandonment of any part of the reliefs is perfectly tenable. There can be no fetter on such a right. However, in this case, the plaintiffs have come with a strange plea that they should be permitted to withdraw the suit with liberty to take a plea of adverse possession in the event of the defendant filing a suit and that the plaintiffs must have right to make such a plea by making a counter claim. The basis for such a prayer is

untenable. An Abandonment of a part of relief can only bar the plaintiffs from filing a suit on the same cause of action for the same relief under Order 23 of the CPC. If the plaintiff has abandoned the suit in part of full and if the defendant files a suit, there can be no bar against the plaintiff for setting up any plea and the withdrawal of the suit cannot operate against the plaintiff from taking any defence, if a suit were to be filed by the defendant. The court cannot grant a permission for filing a counter claim in an anticipated suit by the defendant. The plaintiff can have no order granted by court below to allow for such a liberty. There is no formal defect or error in the whole frame of the suit but the error, according to him, is the plaintiff could not sue for declaration on the basis of adverse possession. He may abandon such a relief but the suit will not be permitted to be withdrawn with liberty to file a fresh suit in the manner sought for in the petition. The petition ought to have dismissed. The court has allowed the petition which is untenable. The impugned order is set aside and the revision is allowed.

2. The counsel for the respondents states that pursuant to the impugned order, the plaintiffs have filed a fresh suit for injunction. The plaintiffs may either withdraw the subsequent suit which is filed or he may seek for joint of trial in suits and if such a request is made, it will be considered in the light of any objection that the defendant may take and the court will pass suitable order in accordance with law.

May 19, 2015
prem

(K.KANNAN)
JUDGE