

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

Civil Revision No.4200 of 2014

Date of decision: 28.08.2015

Pushpa Goyal

.....Petitioner

Versus

Surjit Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioner.

Mr. Vivek Rattan, Advocate,
for respondent No.2.

Mr. Mahesh Dheer, Advocate,
for respondent No.4.

Mr. H.P.S. Ghumman, Advocate,
for respondent Nos.7 to 9.

Ritu Bahri, J.

Challenge in this petition is to the order dated 08.05.2014 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Nabha, dismissing the prayer of plaintiff-petitioner to withdraw the suit against defendants-respondent Nos. 1 to 9, 11 and 12.

Plaintiff-petitioner has filed a suit for symbolic possession by way of specific performance of agreement dated 30.07.2004 executed by Sh.Sant Singh, predecessor of defendant Nos. 1 to 6 in favour of defendant Nos. 8 to 10. Before the trial Court, plaintiff-Pushpa Goyal made a statement through her Special Power of Attorney, to withdraw the suit against defendant Nos.1 to 9, 11 and 12. Before the trial Court, defendant No.10 was proceeded exparte. An objection was raised by defendant No.2-Jaswinder Singh that plaintiff-petitioner could not be allowed to withdraw the suit, as the suit was

filed with regard to an agreement to sell dated 30.07.2004.

While declining the prayer of the plaintiff-petitioner, the trial Court has observed that criminal complaint was pending qua forgery and fabrication of the agreement to sell dated 30.07.2004 and further defendant No.2 has specifically stated that he was the owner in possession of the suit land being a co-sharer.

Learned counsel for the petitioner has informed that the criminal complaint, which was initiated by Jaswinder Singh-defendant No.2 on the ground of forgery, has since been dismissed during the pendency of this petition and the plaintiff-petitioner now restricts her prayer against defendant No.10, from whom the property has been purchased by the plaintiff.

At this stage, reference can be made to the provision of Order 23 Rule 1 CPC, which deals with withdrawal of the suit for abandonment of the part of claim. Same is reproduced as under:-

“23 (1). **Withdrawal of suit or abandonment of part of claim**-(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim;

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Whether the Court is satisfied,--

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a

fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Whether the plaintiff--

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs. ”

As per Clause 1, the plaintiff at any time, after institution of the suit can abandon his claim against any of the defendants. In the present case, since the plaintiff-petitioner was not seeking liberty/permission to file a fresh suit against the defendants, therefore, the trial Court has gone wrong in dismissing the application. As per sub clause (3) and (4), if such liberty is sought by the plaintiff to file a fresh suit, he shall require to make payment of some costs to the defendant. But, such prayer has not been made by the plaintiff-petitioner in this case.

In view of the above, the impugned order dated 08.05.2014 (Annexure P-2) is set aside and the plaintiff-petitioner is allowed to withdraw her suit qua defendant-respondent Nos.1 to 9, 11 and 12.

Allowed accordingly.

28.08.2015
ajp

(RITU BAHRI)
JUDGE