

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

**Civil Revision No.4925 of 2014
Date of Decision: 15.12.2015**

Maghar Singh and another

.....Petitioners

Vs

Amarjit Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Binderjit Singh, Advocate
for the petitioners.

Mr. Siddharth Gupta, Advocate
for respondents.

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?*

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed this revision petition against order dated 17.05.2014 passed by Civil Judge (Jr. Divn.) Phul.

[2]. Plaintiffs/respondents filed suit for permanent injunction against the defendants/petitioners to the effect that plaintiffs are owner in possession of the suit land situated in *abadi* of the village and defendants have no right, title or interest in the suit property. Consequently restraint qua defendants was sought in respect of interference in the peaceful possession of the

plaintiffs without their consent and without order of the Court.

[3]. Defendants have contested the suit on all counts by claiming that previously Puran Singh was the owner of the suit land. He sold this *abadi* land on 16.10.1972 to the father of the defendants Bachan Singh son of Kirpal Singh for a consideration of Rs.1200/- and had delivered the possession of the same to Bachan Singh on the same day. Father of the plaintiffs Puran Singh got scribed the writing from Parkash Chand in the presence of Harbans Singh, Bhajan Singh, Harnek Singh Sarpanch, Mohinder Singh Panch, Karnail Singh Panch and Bheela Singh in favour Bachan Singh. After receiving sale consideration, Puran Singh acknowledged the same to be correct and put his thumb impressions. The witnesses also signed on the writing on the asking of Puran Singh. Since then father of the defendants along with defendants has been continuing as owners in the suit land/*abadi*.

[4]. The defendants have constructed boundary wall around the *abadi* land and have also installed gate in it. They have also constructed a shop for the cattles besides *Khurlies* etc. The land is being used for tying cattles, storing agricultural implements and as well as for storing cow-dunk cakes. Trees have been planted by the father of the defendants. A water tap is in

existence in the suit property.

[5]. A common wall with Dhanna Singh has been erected in the year 2000 in the northern side of the *abadi* in question and defendants had paid Rs.3,000/- to Dhanna Singh towards existence of common wall. A writing was also executed between Dhanna Singh and the defendants in respect of said wall which was scribed by Mehar Chand on 10.03.2000. The writing was signed by Dhanna Singh and defendant Maghar Singh as well as Joginder Singh and Mehar Chand as witnesses. Defendants have constructed common wall with Mohinder Singh and Gurjant Singh on southern side and have also constructed common wall on eastern side with Jaggar Singh and Kaku Singh. Jaggar Singh and Kaku Singh have constructed their houses and defendants have also affixed a gate on the western side of the *gali*. Plaintiffs never remained in possession of the suit land since October 1972. The possession of the defendants is continuous, open and peaceful since 16.10.1972 and plaintiffs have never raised objection of any type since then. The defendants have become owner of property with lapse of time and their possession is hostile to the very knowledge of the plaintiffs since long.

[6]. Karnail Singh one of the plaintiff suffered a statement before the trial Court that he along with co-plaintiff filed suit for

permanent injunction, but during pendency of the suit defendants took illegal possession of the disputed property and, therefore, suit of the plaintiffs became infructuous. Now plaintiffs want to file fresh suit for possession and requested for withdrawal of the suit with permission to file fresh one. The prayer of one of the plaintiff was entertained by the trial Court that during pendency of the present suit defendants took illegal possession of the suit property and, therefore, it can be concluded that the suit of the plaintiffs has become infructuous. Trial Court observed that since the defendants have alleged that the plaintiffs have taken illegal possession of the disputed property, therefore, plaintiffs have no other option except to file suit for possession, therefore, they were allowed to withdraw the suit with permission to file fresh suit for possession subject to law of limitation. The order was passed by the Civil Judge (Jr. Divn.) Phul on 17.05.2014.

[7]. No application for withdrawal of the suit was filed before the trial Court and no notice was issued on such application. It was only a statement made before the trial Court and the trial Court without inviting the defendants to rebut the plea, allowed the suit to be withdrawn on the same day.

[8]. Learned counsel for the petitioners contends that the suit was contested by the parties. After filing replication by the

plaintiffs on 23.08.2011 issues were framed. Application under Order 39 Rules 1 and 2 CPC was disposed of by the trial Court, directing the parties to maintain *status quo* regarding possession till the decision of the suit.

[9]. Plaintiffs' evidence was closed on 21.05.2012. Thereafter defendants examined five witnesses as well as referred to documents. The oral evidence of the defendants was closed on 29.10.2013 and documentary evidence was also closed on 25.02.2014 and the case was fixed for arguments. It was at the last stage of litigation, plaintiff No.2 Karnail Singh through his counsel made a statement on 17.05.2014 for withdrawal of the suit with permission to file suit for possession.

[10]. Learned counsel for the petitioners submits that Bachan Singh was alive at the time of filing of the suit, but he was not impleaded in the suit. Bachan Singh died only on 03.11.2011. The plaintiffs were fully aware of the fact that Bachan Singh father of the defendants was owner in possession of the suit land at the time of filing of the suit and their father Puran Singh had sold the suit property to Bachan Singh by way of sale writing dated 16.10.1972. The plaintiffs/respondents could not have been allowed to withdraw the suit with permission to file fresh suit, at this stage of litigation.

[11]. The trial Court has not followed the proper procedure

while passing the impugned order. No application was filed by the plaintiffs for withdrawal of the suit in terms of Order 23 Rule 1 CPC, nor any notice was issued to the defendants/petitioners for filing reply and no opportunity was afforded to the defendants prior to passing of impugned order. On the date of hearing, statement was made and on that very day impugned order was passed in utter violation of principles of natural justice. The requirement of law in terms of Order 23 Rule 1 CPC has been flouted. An application is required to be filed for withdrawal of the suit and notice has to be issued to the defendants in terms thereof. No order of withdrawal can be passed in the manner as done by the trial Court. The ingredients of Order 23 Rule 1 CPC in terms of satisfaction of the Court that the suit has to fail on formal defects has to be observed by the trial Court.

[12]. The trial Court has committed error of jurisdiction in permitting the plaintiff to withdraw the suit with permission to file fresh one on same cause of action.

[13]. The Impugned order does not point out any formal defect in the suit of the plaintiffs, nor the Court has come to the conclusion that the suit is likely to fail on such formal or technical defect which is a condition precedent for allowing the plaintiffs to withdraw the suit with liberty to file fresh.

[14]. Permission to allow a suit at such a stage of the litigation particularly in the absence of application under Order 23 Rule 1 CPC, in considered opinion of this Court was the minimum requirement. The defendants should have been called upon to file objection against such a move of the plaintiffs.

[15]. Having considered the impugned order, I am of the view that the impugned order is totally non-speaking in terms of requirement of Order 23 Rule 1 CPC. The same is cryptic and violative of principles of natural justice. Consequently, the impugned order is set aside.

[16]. However this order will not preclude the plaintiffs from filing any application in accordance with law. In case such an application is filed the same shall be decided by the trial Court in accordance with law.

[17]. With this observation this revision petition is allowed.

December 15, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**