

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

CR No. 5468 of 2012 (O&M)

Date of decision: August 5, 2015

Shri Chandreshwar Giri

...Petitioner

Versus

Shree Panch Dashnam Juna Akhara and another

...Respondent

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: Ms. Deepali Puri, Advocate,
for the petitioner.

Mr. GS Jaswal, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The impugned order cannot be supported at all for the simple reason that the application filed by the plaintiffs for withdrawal does not set out any of the ingredients specified under Order 23 Rule 1 CPC for permission to file a fresh suit on the same cause of action. All that the plaintiffs have stated is that the defendant has taken possession of the property in violation of the order of injunction. The counsel for the petitioner points that that even in the suit the possession of the property in the hands of the defendant is an admitted fact and the plaintiffs have asked only for the relief of mandatory injunction to hand over the possession.

Even interim injunction sought for by the plaintiffs was only against alienation and there could have been no disobedience of that order so long

as no alienation was effected by the defendant. That was not even the contention specifically made in the application.

2. The counsel for the respondents explains there is denial by the defendant of the plaintiffs' status as a Chela of Mahanat who was to administer the Ashram after his death and that the defendant's own status requires to be examined. Those prayers will have to be brought in suit and they were omitted to be stated only because the defendant's contention denying the plaintiffs' status came to be known only after the written statement. These are mere explanation offered by the counsel for the respondents without any such ground being made in the application filed for withdrawal.

3. The order granting permission to file fresh suit on the same cause of action cannot be given on the ground set forth. The order is, therefore, not tenable and it is set aside and the revision petition is allowed.

4. The counsel for the respondents states that he will move a fresh application before the court below for withdrawal of the suit by setting out appropriate circumstances which would justify withdrawal with liberty to file a fresh suit. I cannot presage a result of a contemplated petition which is not before this court so far. I cannot prevent any application or intended petition through an order. If any such application is filed by the respondents, it will be considered on its own merit, after inviting objection from the defendant.

5. With these observations the revision is allowed.

August 5, 2015
prem

(K.KANNAN)
JUDGE