

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

CR No.5839 of 2015 (O&M).

Date of Decision: 16.11.2015.

Jai Pal and another

....Petitioners.

VERSUS

Harjeet Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.K. Panwar, Advocate for the petitioners.

SNEH PRASHAR, J.

CM-18513-CII-2015

Allowed as prayed for.

CR No.5839 of 2015

This is a petition under Article 227 of Constitution of India for setting aside the order dated 06.08.2015 passed by learned Civil Judge (Junior Division), Jagadhri, vide which the application of respondent No.2-Prabhdeep Singh for restoration of suit was allowed.

The facts garnered from the record indicate that a suit for possession of land measuring 05 Marlas (detail of which was given in head note of the plaint) situated in area of Satsang Vihar, Jagadhri within the revenue estate of village Bhatouli and challenging the decree dated

19.03.2010 passed in Civil Suit No.276 of 03.08.2009 titled 'Raj Rani vs. Jai Pal' passed by Additional Civil Judge (Senior Division), Jagadhri, as null and void and not binding on the rights of the plaintiffs, was filed by Harjeet Kaur wife of Milap Singh, Milap Singh son of Pal Singh and Prabhdeep Singh son of Baljit Singh (plaintiffs). During pendency of the suit, Smt. Harjeet Kaur appeared in person before the trial Court and made statement on 21.02.2012 seeking to withdraw the suit as the suit land had been partitioned and she was left with no share in the same. In view of her statement, the suit was dismissed as withdrawn by learned trial Court vide order even dated i.e. 21.02.2012.

Subsequently, Prabhdeep Singh (plaintiff No.3) filed an application for restoration of the suit and for deciding the same on merits. He submitted that he had never authorized Harjeet Kaur (plaintiff No.1) to withdraw the suit on his behalf and that the factum of dismissal of the suit as withdrawn came to his knowledge in the first week of July, 2012. The application was resisted by petitioners-defendants. In the reply filed by them they alleged that the application had been filed by Prabhdeep Singh with an oblique motive as the factum of withdrawal of the suit was very much in his knowledge and the suit was dismissed as withdrawn on the statement of Harjeet Kaur and the counsel representing all the plaintiffs.

The application filed by Prabhdeep Singh was allowed by learned trial Court vide order dated 06.08.2015 and the suit was restored to its original number.

Aggrieved by the order, the defendants-petitioners have filed

the instant revision petition.

The submissions made by learned counsel representing the petitioners have been considered.

Learned counsel for the petitioners argued that all the three plaintiffs Harjeet Kaur, her husband Milap Singh and Prabhdeep Singh were represented by the same Advocate. The statement made by plaintiff Harjeet Kaur for withdrawal of the suit was also signed by the Advocate representing all the plaintiffs which proved that the other two plaintiffs Milap Singh and Prabhdeep Singh had also authorized their Advocate to withdraw the suit on their behalf. Learned counsel contended that while the suit was dismissed as withdrawn on 21.02.2012, the application for restoration of the suit was filed by Prabhdeep Singh on 17.08.2012 i.e. much after expiry of the limitation period of 30 days for filing an application for restoration of the suit but no application for condonation of delay was filed alongwith the application and therefore the application could not be allowed.

There is no force in the argument of learned counsel for the petitioners. Photostat copy of the statement of plaintiff Harjeet Kaur recorded by learned trial Court on 21.02.2012 has been annexed with the present petition. Perusal of the statement shows that it was made only by Harjeet Kaur wherein she specifically stated that since the suit land had been partitioned and she was left with no share in the same she did not want to pursue the present suit further and prayed for withdrawal of the suit. She signed the statement and the Advocate who signed beneath her signature

appended his signature only to identify her. No statement made by the Advocate representing all the three plaintiffs for withdrawal of the suit has been produced by the petitioners, therefore, it does not lie in their mouth to say that the advocate representing all the three plaintiffs had made statement for withdrawal of the suit. As noticed by learned trial Court, nothing could be produced by the petitioners to prove that plaintiff no.3 Prabhdeep Singh had authorized Harjeet Kaur (plaintiff no.1) to withdraw the suit on his behalf. Harjeet Kaur had also not made any such statement before the trial Court on behalf of petitioner Prabhdeep Singh. When she specifically stated that she had no share left in the suit land and therefore did not want to pursue the case, the suit should have been dismissed as withdrawn only qua her and not on behalf of the other plaintiffs.

In his application, Prabhdeep Singh stated that he had come to know about withdrawal of the suit in July, 2012 and as represented by the petitioners he filed the application on 17.08.2012. When the order dismissing the suit as withdrawn on behalf of Prabhdeep Singh was erroneous/ illegal, there was no necessity for him to file application for condonation of delay in filing the application for restoration of the suit filed by him.

There being no illegality or perversity in the order of learned trial Court, the revision petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

16.11.2015.
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