

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

CR-6980-2014
Date of decision : 27.07.2015

Varinder Kumar Uppal

..... Petitioners

Vs.

Swatantar Kumar Uppal and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vaibhav Narang, Advocate
 for the petitioner.

None for the respondents.

SABINA, J.

Petitioner has filed this petition challenging the order dated 13.08.2014.

Learned counsel for the petitioner has submitted that the petitioner had filed a suit for separate possession by way of partition of the suit property by metes and bounds. However during the pendency of the suit, it transpired that the petitioner had failed to implead all the legal heirs of deceased Kewal Krishan and the entire property owned by Kewal Krishan was not the subject matter of the suit. Hence, the petitioner had prayed that he may be permitted to withdraw the suit with permission to file a fresh one on the same cause of action. Trial Court vide impugned order had directed the petitioner to withdraw the suit without permitting the petitioner to file a fresh one on the same cause of action. Learned counsel for the petitioner has further

submitted that the trial Court should have either allowed the petition in its entirety or should have dismissed the application. In support of his contentions, learned counsel has placed reliance on Rajasundari w/o Sivaramkrishnan Vs. Gowri alias Avaduai Ammal and others, 2006 AIR (Madras), 156 wherein it was held as under :-

“An application to withdraw the suit with liberty to file a fresh suit must either be allowed or refused in toto. It is not open to the Court to grant a prayer for withdrawal and refuse the leave. If liberty is refused, the suit should not be dismissed, but must be retained in the file for trial/continuation of trial. If an application is made for withdrawal of the suit with liberty to file a fresh suit, it is not open to the Court to grant only permission for withdrawal, without liberty to file a fresh suit. If the Court simply allows withdrawal but refuses liberty, the Court would be acting without jurisdiction in dividing the petition into two parts. It is to be noted that the application under Order 23, Rule 1(3) of Civil Procedure Code is indivisible whole. The trial Court was not right in separating the prayer for withdrawal and the leave to file a fresh suit. When the Court has declined to grant leave to file a fresh suit, the trial Court ought to have dismissed the application in toto.”

None has appeared on behalf of the respondent despite service.

There is force in the argument raised by learned counsel for the petitioner. In the present case, the trial Court vide impugned

order although permitted the petitioner to withdraw the suit but did not grant him permission to file a fresh suit on the same cause of action. The trial Court should have either allowed the application in its entirety or should have proceeded with the suit on merits.

Accordingly, the petition is allowed and the impugned order dated 13.08.2014 is set aside and the trial Court is directed to pass a fresh order in accordance with law.

**(SABINA)
JUDGE**

July 27, 2015
anju