

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 7211 of 2014.
Date of Decision : 19.03.2015.

Risala

...Petitioner

Versus

Satpal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA.

Present: Mr. Kuldeep Tiwari, Advocate for the petitioner.

Sabina, J.

Petitioner has filed this revision petition challenging the order dated 19.02.2014 (Annexure P-6), whereby, the plaintiff-respondent No. 1 was permitted to withdraw the suit with permission to file a fresh one on the same cause of action.

Learned counsel for the petitioner has submitted that the trial Court had erred in allowing the respondent No. 1 to withdraw the suit with permission to file a fresh one as the suit had remained pending for more than 12 years and the parties had led their evidence. Since the plaintiff was not able to substantiate his case, the application for withdrawal of the suit had been filed.

Trial Court while allowing the plaintiff-respondent No. 1 to withdraw the suit with permission to file afresh one on the same cause of action has held as under :-

"5. As per the averments made in the application, some of the record which is material for the adjudication of the present suit is old and have been stranded during shifting of the record from Karnal to Kurukshetra and from Kurukshetra to Kaithal and by

adopting alternative mode like filing application under R.I.T. Act etc. the plaintiff wants to procure the record to be produced to prove his case. The defendant/respondents have not denied the same. During pendency of present case, joint Khewat was partitioned and he wants to challenge the same and it being subsequent event concerned with the subject matter of the present suit amounts to formal/technical defect. Respondents/defendants have admitted the factum of partition, therefore, in view of the subsequent event having arisen and in view of the fact that the record material for complete adjudication of the matter in dispute could not be produced by the plaintiff for the reasons beyond his control, there is sufficient ground for allowing the plaintiff to institute fresh suit on the same subject matter. Therefore, the present application for withdrawal of present suit with permission to file fresh suit on the same cause of action is hereby allowed. However, in view of the inconvenience and hardship caused to the defendants/respondents, the filing of fresh suit would be subject to payment of costs of ₹3000/- to be paid to the defendants/respondents. File be consigned to the record room after due compliance."

The reasons given by the learned trial Court, while allowing the plaintiff to withdraw the suit with permission to file a fresh one on the same cause of action are sound reasons. No ground for interference is made out.

Dismissed.

March 19, 2015.
kanchan

(SABINA)
JUDGE