

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.1558 of 2016
Date of decision:29.02.2016

Jaswant Singh and another ... Petitioners

Vs.

Bachan Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Karan Nehra, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-plaintiffs are aggrieved of the order dated 02.02.2015 (Annexure P-5), whereby, an application filed under Order 23 Rule 1 of the Code of Civil Procedure, seeking withdrawal of the suit with permission to file fresh one on the same cause of action, has been dismissed.

Mr. Karan Nehra, learned counsel appearing on behalf of the petitioner submits that necessity to move an application for withdrawal of the suit arose, for, a fraud had been played by the defendants upon Bachan Singh on the basis of the alleged power of attorney dated 03.09.1997 and 11.08.2000, which were forged and fabricated, much less, no considerations were passed to the principal whereas, sale deeds are result of no transaction between Bachan

Singh and Surinder Kumar, as he was doing the business of money lending without any license. In the suit, previous counsel had sought declaration taking the plea that the land upon which the residential house is situated is ancestral but omitted to take the plea of transaction on the basis of 'General Power of Attorney', as well as, execution of sale deeds, *ibid*. In these circumstances, there was technical defect in the suit and sought the permission of Court to withdraw the same and this situation arose when the defendants had taken specific objections in the written statement. He further submits that the trial Court proceeded further with the case without framing issues. The procedure followed by the trial Court is alien, much less, callous to the procedure of justice.

I have heard learned counsel for the petitioner-plaintiffs and appraised the paper book and of the view that averment made in the suit, having an inherent defect, as per the provisions of Order 2 Rule 4 of the Code of Civil Procedure is misplaced. For the sake of brevity, the prayer sought in the suit reads thus:-

“15. That the plaintiffs, therefore, humbly pray for the grant of following decrees:-

A decree for declaration to the effect that two sale deeds dated 3.9.97 and 118.2000 executed and got registered by defendant no.2 as attorney of defendant no.1 in favour of defendant no. 3 on the basis of falsely prepared fake, forged and fabricated two power of attorneys dated 22.1.1996 vide Vasika nos 853/4 and. 852 respectively being based on

fraud and misrepresentation of defendant no.1 by defendant no.2 with regard to land and mutations No.4481 sanctioned on 11.11.1999 and mutation no.4784 sanctioned on 20.11.2000 respectively of suit land in favour of defendant no. 3 on the basis of above said impugned sale deeds dated 3.9.1997 and 11.8.2000 are also wrong, illegal, null and void ab-initio being part of Joint Hindu Family Property allegedly sold by defendant no.1 to defendant no.3 through defendant no.2 on the basis of false, forged and fabricated power of attorneys dated 22.1.1996 without any legal necessity of Hindu Undivided Family and also, without any valuable sale consideration, without the consent and knowledge of plaintiffs and against their interest and benefit and hence, abovesaid sale deeds dated 3.9.1997 and 11.8.2000 in favour of defendant no.3 and mutation no. 4481 and 4784 respectively on its basis are ineffective and inoperative against the title, interest and rights of plaintiffs in Hindu Undivided family 'property.

b) A decree for joint possession of suit land as fully detailed above in the head notice of the plaint, alongwith all its incidental rights appurtenant thereto may also be passed in favour of plaintiffs and defendant No.1 and against defendants No.2 and 3.

c) A decree for permanent injunction restraining the defendant no. 2 and 3 permanently from alienating, any part of suit land in any manner whatsoever to any person and also restraining the defendants permanently from dispossessing the plaintiffs from suit property under the garb of

impugned abovesaid sale deeds and restraining the defendant no. 3 from disturbing the possession of plaintiffs over suit property or raising any sort of construction over any part thereof under the garb of abovesaid impugned sale deeds dated 3.9.1997 and 11.8.2000 or under any garb or abovesaid impugned mutations with regard to suit property or in any other manner whatsoever of any kind, may please be passed in favour of the plaintiffs and against defendants with costs.

d) Any other adequate relief to which the plaintiffs are found entitled may also be granted to them with costs.”

The relief of declaration vis-a-vis cancellation of power of attorney, subsequent sale deeds, is inherent. The Order 6 Rule 2 of the Code of Civil Procedure provides that plaint to be concise and give precise statement of facts, in essence, the entire evidence is not required to be pleaded, which can be elaborated at the time of evidence where the parties are at variance. On going through the prayer clause, I am of the view that there is no inherent defect entailing into withdrawal of the suit with liberty to file fresh one. It is settled law, suit can be permitted to be withdrawn when there is inherent defect. In my view, the trial Court rightly dismissed the application.

The plea of Mr.Nehra, vis-a-vis applicability of provisions of Order 2 Rule 4 of the Code of Civil Procedure, has no legs to stand. The aforementioned provisions of CPC have to be read in

conjunction with Rule 2 Order 2 of the CPC.

Keeping in view the aforementioned observations, I do not intend to differ with the findings rendered in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 29, 2016
savita