

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2343 of 2011 (O&M)

Date of decision: February 15,2016.

Mohar Singh and another

.....Petitioners

VS.

Bhai Balwinder Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Navjot Singh, Advocate
for the respondent.

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?

K.KANNAN,J (Oral)

1. The revision is against the order allowing for an application to withdraw the suit with liberty to file a fresh suit. The suit has been filed for recovery of possession initially and an objection taken was that the relief was not competent without proof of declaration. An application has been filed to withdraw the suit with liberty to file fresh one, but that application was dismissed as withdrawn. The trial progressed for some time and the plaint was sought to be amended for the relief of declaration. The court declined it. At that stage, the plaintiff filed a fresh application for withdrawal of the suit with liberty to file a fresh suit. The court has

allowed.

2. The learned counsel appearing on behalf of the defendant has an objection that a right has accrued to him to plead on the non-maintainability of the suit for the reliefs asked and that right will have lost when a fresh suit were to be instituted.

3. I reject the contention as untenable and unjust. The plaintiff has been knocked out at various stages, which are wholly improper. If plaintiff withdrew his own application to withdraw the plaint by an advice that can make good the pleadings and introduce a prayer for declaration by an amendment, the Court ought to have allowed it. Instead it proceeded to dismiss on the objection taken by the defendant. In a situation where the attempt of the plaintiff to modify the frame of the suit failed, the only possible course for the plaintiff was to withdraw the suit and bring a suit that was tenable. The court at least brought justice by allowing such an application instead of succumbing to an objection from the defendant again that the application should not be allowed. It would have meant a path of no return for a plaintiff who had initially brought the suit with reliefs, which, according to defendant, could not have been maintained in the manner in which the suit was framed.

4. There is no accrued right for the defendant to contend that the plaintiff will secure no relief, if there had been an error in the frame of suit. It is only to prevent technical flaws that there exists a provision like Order 6 Rule 17 CPC. If the court did not originally accommodate the plaintiff for making good a defective plaint, the defendant could not claim that he can steal a march over the plaintiff's right for all times to come.

5. I will make no intervention with the order passed except to direct the plaintiff to pay cost of ₹ 5000/-, to the defendant. The counsel for the respondent

says that the suit has already been filed. Further process in trial will commence only after filing proof of payment of token cost which I have awarded.

6. The Revision petition is dismissed with the above observations and directions.

FEBRUARY 15, 2016

Rajeev

(K.KANNAN)
JUDGE