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

CR-2384-2015

Date of decision : 23.04.2016

Dhoom Singh and another

... Petitioners

Versus

Satbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Pandit, Advocate and
Mr. Balbir Kumar Saini, Advocate
for the petitioners.

Mr. Vineet Chaudhary, Advocate
for the respondents.

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?

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 29.01.2015 (Annexure P-8), whereby at the stage of plaintiff's evidence, the suit has been permitted to be withdrawn with liberty to file fresh one.

Mr. Sanjeev Pandit, learned counsel appearing on behalf of the petitioners submits that the prayer in the suit instituted was claiming declaration with regard to the entry of mortgage in favour of the defendant Nos.1 to 3 appearing in the jamabandi. During the pendency of the suit, an application was moved seeking amendment of the plaint by substituting paragraph 4, where it was mentioned that the mortgage deed was never

executed. Averment qua redemption of the mortgage 1943 was sought to be incorporated, the said application was dismissed. It is only after the dismissal of the application, an application for withdrawal of the suit had been moved. Such an exercise is an attempt to wriggle out and circumventing the order of dismissal of the application and therefore, the suit cannot be said to be suffering from inherent defect, thus, urges this Court for setting aside the impugned order.

Mr. Veneet Chaudhary, learned counsel for the respondents submits that the factum of redemption of the mortgage came to the knowledge of the respondents-plaintiffs subsequent to filing of the suit and in this regard, an application was moved. By way of amendment, the aforementioned fact sought to be incorporated. In support of his contentions, he relies upon the judgment of this Court rendered in **“Vinod Kumar V/s Gurmail Singh and another” 2012 (1) RCR (Civil) 539** and prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit in the submissions of Mr. Sanjeev Pandit. For the sake of brevity, prayer made in the suit reads thus”-

“It is, therefore, prayed that a decree for declaration under Section 45 of the Punjab Land Revenue Act to the effect that entry of mortgage in favour of the defendants appearing in the jamabandi for the year 1963-64 onwards in respect of land measuring 6k-6m, out of the total land measuring 34K-9M, bearing khewat/khatauni No.407/476, Khasra No.17//24 (1-17), 25/1 (2-16), 18//22/1 (1-13) situated in village Sohana, H.B.

No.102, Tehsil Barara, District Ambala are wrong, vague, stray and misconceived, not binding upon the rights of the plaintiffs and the same are liable to be corrected/rectified in respect of the aforesaid land with a consequential relief of permanent injunction restraining the defendants No.1 and 2 from claiming any right of any kind in the aforesaid land and from interfering, selling, alienating and creating any sort of charge over the aforesaid land in any manner whatsoever may kindly be passed in favour of the plaintiffs and against the defendants No.1 and 2 with costs of the suit and any other relief to which the plaintiffs are found entitled to in law and equity, be also granted to the plaintiffs.”

The undisputed fact which cannot escape the notice of this Court is that application for amendment seeking withdrawal of substituted paragraph 4 of the plaint by incorporating plea of redemption of the mortgage instead of there being no mortgage, had been dismissed. The application for withdrawal of the suit is with an intention to wriggle out of effect of the dismissal of the application seeking amendment of the plaint and file the fresh by incorporating the plea of redemption. In my view, such an act on the part of the respondents-plaintiffs amounts to circumventing the order, which is not permissible. Even in the intended or proposed suit, the respondents-plaintiffs intend to seek the same relief, thus, there cannot be said to be any inherent defect as paragraph 4 of the plaint was with regard to the factual aspect and there cannot be said to be any inherent defect in the suit. The judgment rendered in “Vinod Kumar's case (supra) relied upon by the learned counsel for the respondents-plaintiffs, wherein suit for declaration and consequential

relief of injunction was sought, but an application for amendment was filed for incorporating the relief of possession, which was declined and thereafter suit was permitted to be withdrawn. However, the facts as narrated above are totally different to the present case.

In view of the facts and circumstances of the case as narrated above, the same relief has sought to be incorporated in the proposed and intended suit. In my view, the suit cannot be said to be suffering from any inherent defect as it had reached at the stage of cross-examination of the plaintiff after examination of the five witnesses, in support of averments made in the plaint. These facts have not been noticed by the trial Court while allowing the application, in my view, the impugned order dated 29.01.2015, under challenge, suffers from illegality and perversity and the same is hereby set aside.

With the aforesaid observations, the revision petition is allowed.

23.04.2016
yogesh

(AMIT RAWAL)
JUDGE