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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2764-2014

Date of decision : 19.12.2016

Shashi Bala

... Petitioner

Versus

Manjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner.

Ms. Sunita Nambiar, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is at the instance of the petitioner-defendant, who is aggrieved of the impugned order, whereby the suit seeking following relief has been ordered to be withdrawn with liberty to file fresh:

“Suit for declaration to the effect that the plaintiff is the absolute owner in possession of one plot No.71, measuring North-63, South-63, East-30, West-30 being part of Khewat No.90 (78min), Khatauni No.101, Khasra No.10//13 situated in the revenue estate of Will. Pansara, H.B.No.127, Tehsil: Jagadhri, Distt. Yamuna Nagar as per Jambandi 1992-93 and that Khasra No.10//10 has been wrongly mentioned in sale deed No.934/1 dated 23.05.1995 executed by Late Shri Hari Chand son of Shri Daya Ram, resident or Vill. Pansara in favour of the plaintiff, while it is in fact Khasra No.10//13 as bounded as under:-

*North-Plot No.70,
South-Plot No.72,
East-Rasta 20' wide,
West-House of Man Singh Chharpuria
AND*

for permanent injunction restraining the defendants from interfering in any way of manner in the ownership and possession of the house of the plaintiff constructed over the above plot.”

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the petitioner-defendant submits that before the passing of this order, two application seeking amendment had already been moved. The earlier suit was withdrawn in the year 2008 and thereafter, in the present suit, two amendments, as indicated above, which had been allowed and yet the respondent(s)-plaintiff(s) could not cure the defect. Such person cannot be allowed to perpetuate the illegality at their own convenience. The trial Court did not notice the aforementioned fact. There are parameters for withdrawing the suit. The suit cannot be permitted to be withdrawn at the drop of a hat until and unless there is an inherent defect, thus, urges this Court for setting aside the findings under challenge.

Per contra, Ms. Sunita Nambiar learned counsel appearing on behalf of respondent No.1-plaintiff(s) submits that since already two amendments were sought, in case, third amendment is sought, the same would not have been entertained as there was a defect of not giving the correct particulars of the khasra number as 10//13 instead of 10//10, it is, in this aspect of the matter, the suit has been ordered to be withdrawn, thus, urges this Court for affirming the findings under challenge as there is no gross illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the order under challenge does not suffer from any illegality and perversity as twice the respondent(s)-plaintiff(s) had sought the amendments, but yet could not correct the khasra numbers, as indicated above. The Court below instead of allowing the suit to be continued and correct the same at the fag end of the trial, had permitted to withdraw the suit with permission to file fresh one. Such order, in my view, is innocuous.

No ground is made out for interference and accordingly, the revision petition is dismissed.

Of course, there shall be a cost, which the Court below had not imposed and the same shall be to the tune of ₹ 10,000/- to be paid to the learned counsel representing the petitioner(s)-defendant(s) in the High Court.

19.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**