

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.3087 of 2012 (O&M)

Date of Decision: March 16, 2016

Baljit Kaur & others

...Petitioner

Versus

Smt.Sukhminder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Binderjit Singh, Advocate,
for the petitioners.

Mr.J.R.Mittal, Senior Advocate with
Mr.Lalit Sharma, Advocate,
for respondent Nos.1 & 2.

Mr.Jatinder Singh, Advocate for
Mr.R.S.Pandher, Advocate,
for respondent Nos.42 and 43.

AMIT RAWAL, J. (Oral)

CM No.1913-CII of 2014

Prayer in the application is for impleading the names of applicants as respondent Nos.42 and 43. Allowed subject to all just exceptions.

CM stands disposed of.

CR No.3087 of 2012

The petitioners are aggrieved of the order dated 6.3.2012, whereby the application seeking restoration of the application filed under Section 144 CPC, has been allowed.

This case has a chequered history. A civil suit for possession was instituted at the instance of Balwant Singh and Balbir Singh in respect of land measuring 91 kanals 10 marlas. Balwant Singh exposed the name of proforma defendant therein. The said suit was decreed vide judgment and decree dated 17.4.1978. The aggrieved party assailed the same by filing an appeal, which was modified by holding that the plaintiffs were entitled to 2/9 share only in the suit property and not the share of the proforma respondent. Two Regular Second Appeals bearing Nos.697 and 1300 of 1982 were filed, which were dismissed and the judgment and the decree were upheld.

During the interregnum, the plaintiffs stated to have taken the possession of the entire land on 3.5.1978. It is in these circumstances, an application under Section 144 CPC was filed on 28.11.2002 on behalf of three persons, namely, Sukhminder Kaur, Jaspal Singh and Jaswinder Kaur. The aforementioned application was withdrawn by moving an application for preponment of the hearing vide order dated 17.7.2003. After 5-½ years, an application was filed at the behest of Sukhminder Kaur and Jaswinder Kaur on the premise that the application seeking withdrawal of the application under Section 144 CPC was not signed, much less their consent was not taken. It is only Jaspal Singh, who allegedly had compromised the matter with the decree holders. The order dated 6.3.2012, vide which the said application has been allowed, has been challenged in the present revision petition.

Mr.Binderjit Singh, learned counsel appearing on behalf of the petitioner-decree holders submits that along with the application seeking restoration of the application, an application seeking condonation of delay

was also filed, however, the trial Court has not passed any separate order thereon and only passed the order on the main application, thus, there is illegality and perversity in the impugned order and, therefore, the same is not sustainable in the eyes of law. He further submits that Sukhminder Kaur and Jaswinder Kaur are none else but the mother and sister of Jaspal Singh, who has allegedly taken the possession of the land. The trial Court, after noticing the statement of the counsel, permitted the withdrawal of the application under Section 144 CPC. These facts have been placed on record by moving Misc.Application No.2389-CII of 2015, thus, prays for setting-aside of the impugned order.

Mr.J.R.Mittal, learned Senior Counsel assisted by Mr.Lalit Sharma, Advocate, appearing on behalf of respondent Nos.1 and 2 submits that the Advocate did not have the authority to withdraw the application, much less the application was not signed by Sukhminder Kaur and Jaswinder Kaur, *ibid*. The application bears the signatures of only Jaspal Singh. In support of his submission, relies upon the judgment rendered by the Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society Versus Balwan Singh**, 2015(5) JT 624 to contend that in such type of matters, the counsel should not have exercised the power given in the power of attorney or ought to have insisted the presence of the parties concerned for withdrawal of the application in order to rule out the element of undue benefit, much less fraud.

The aforementioned application was contested by framing the issues and the Advocate, who had withdrawn the application, appeared as a petitioners' witness and stated that he had no instructions for withdrawal of the application. In view of such situation, the Court below has rightly

passed the order by recalling the order dated 17.7.2003. Even otherwise, the petitioners cannot have a grievance as they are in possession of the land more than their share, much less against the judgment and decree of the Lower Appellate Court, which has been upheld by this Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the revision petition. The aforementioned submissions are duly fortified on perusal of the application, alleged to have been filed for withdrawal of the application under Section 144 CPC. It is only signed by Jaspal Singh and not by the other two co-applicants. I am in agreement with the ratio decidendi culled out by the Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society's case (supra)**, wherein it has been held that for withdrawal of the suit or any such application, the statement of the party concerned is required to be recorded, in essence the counsel is not competent even for making the statement on his own. For the sake of brevity, the ratio decidendi culled out by the Hon'ble Supreme Court is extracted herein below:-

“(i) Lawyers owe fiduciary duties to their clients-Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

(ii) A lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement.

(iii) Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

(iv) In some cases lawyers can make decisions without consulting client-While in others, the decision is reserved for the client.

(v) *It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.”*

The present case is of a similar kind, wherein on perusal of the statement (at page 50 of the paper book), which is extracted herein below, it is the only the counsel who had made the statement and not the party:-

“Statement of Sh.H.S.Dhinger ad for plaintiff.

Stated that under instructions of client stated that parties have effected compromise. Therefore does not want to pursue the application. Withdraws. Order dated 17.4.78 (17.4.78) be returned.

RO&AC

Sd/-CJ (JD)

Sd/-HS Dhinger

17.7.03”

When the same very counsel has appeared for the petitioners and made the statement that he had no instructions to withdraw the application, a valuable right of the respondents in the application under Section 144 CPC has been taken away and, therefore, rightly so the application has been allowed by recalling the order dated 17.7.2003. The impugned order cannot be said to be illegal or perverse, much less without jurisdiction.

There is no merit in the revision petition. The same stands dismissed.

March 16 , 2016
ramesh

(AMIT RAWAL)
JUDGE