

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

**CR No.3404 of 2014
Decided on: 27.05.2016**

Maya Devi

....Petitioner

Versus

Sanjaya and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. R.S. Sangwan, 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?*

REKHA MITTAL, J.

The present petition has been directed against order dated 17.04.2014 (Annexure P-2) passed by the Additional District Judge, Narnaul, dismissing application (Annexure P-1) whereby prayer for withdrawal of the suit and appeal with liberty to file a fresh suit on the same cause of action has been dismissed.

Counsel for the petitioner would contend that the trial Court has decided issue No.5 against the petitioner/plaintiff with the findings that the plaintiffs have foregone their claim against defendants No.4, 5, 7, 14 and 16 on 28.04.2005 who were co-sharers in the suit property and thus, suit of the plaintiffs becomes non-maintainable for non-impleading of all the necessary parties. It is further argued that due

to some inadvertent mistake, suit against defendants No.4, 5, 7, 14 and 16 was withdrawn and the same may result in dismissal of the appeal, therefore, the Court of appeal should have allowed application for withdrawal of the suit with liberty to file a fresh one. It is further argued that in case the necessary permission is allowed, the plaintiffs will not adduce fresh evidence and evidence already recorded by both the parties, tested in cross-examination shall stand completed.

Counsel for the respondents has submitted that the suit filed by Sh. Ram (since deceased) and others for partition of the suit property was dismissed in view of findings of the trial Court recorded on Issues No.1, 2, 3 and 5. It is further argued that even on an earlier occasion, the plaintiffs were permitted to withdraw the suit with liberty to file a fresh one by the Court of appeal and the said fact has been duly noticed in the impugned order. According to counsel, in view of conduct of the plaintiffs that they have lost the litigation twice before the trial Court, the Court of appeal has rightly refused to allow application for withdrawal of the suit with permission to file a fresh one on the same cause of action.

I have heard counsel for the parties, perused the paperbook particularly the order impugned.

The trial Court recorded findings on all the issues and Issues No.1, 2, 3 and 5 were determined against the plaintiffs/appellants. Counsel for the petitioner has not disputed, as has been noticed by the Appellate Court that even on an earlier occasion, permission to withdraw the suit at appellate stage was allowed with liberty to file a fresh suit on the same cause of action. Keeping in view

the fact that suit has been decided against the plaintiffs/appellants by the trial Court twice and findings recorded on Issues No.1, 2, 3 and 5 coupled with the factum that earlier also the plaintiffs withdrew the suit with liberty to file a fresh one on the same cause of action, allowed by the Appellate Court, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed.

27.05.2016

yakub

(REKHA MITTAL)
JUDGE