

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

CR No.397 of 2016

Date of decision: 21.01.2016

Ishwar Lal through LRs

..... Petitioners.

Versus

Ashok Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Manjit Singh Uppal, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present civil revision petition under Article 227 of the Constitution of India has been preferred against the order dated 18.12.2015 passed by the learned Civil Judge (Jr. Division). Patiala, whereby the application filed by the petitioners for rejection of the plaint qua plaintiff-respondent no.1 has been dismissed.

2. Respondents no. 1 and 2 have filed the suit for separate possession by way of partition by metes and bounds of the properties owned by late Sh. Haru Ram situated at Main Bazar, Tripari Town, Patiala.

3. As per averments in the plaint, after the death of Haru Ram, the father of the parties inherited the properties in dispute. After death of the parents of the parties, the plaintiffs

and defendants had acquired 1/6th share each in the suit properties. They are in joint possession of the properties in dispute and the suit has been filed to claim separate possession to the extent of their share by way of partition.

4. During the pendency of the suit, plaintiff no. 1 compromised with the defendants and withdraw his suit. Defendants-petitioners filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of the plaint qua plaintiff no.2-respondent no.1 Ashok Kumar. The said application was dismissed by the learned trial Court vide impugned order dated 18.12.2015. Hence this revision petition.

5. I have heard Mr. M.S.Uppal, Advocate, learned counsel for the petitioners and have meticulously gone through the paper book.

6. Initiating the arguments, learned counsel for the petitioners contended that as the suit has been withdrawn by the main plaintiff, plaintiff no. 2 cannot continue with the suit. He should either amend the plaint or withdraw the suit with liberty to file the fresh suit. Thus, he pleaded that the plaint is liable to be rejected under Order 7 Rule 11 CPC qua plaintiff no. 2. He relied upon case **Soumik Sil Vs. Subhas Chandra Sil, 2014(3) Law Herald (P&H) 2093(SC)**.

7. I have duly considered the aforesaid contentions.

8. I do not find any substance in the contentions

raised by learned counsel for the petitioner. Respondent no.1- Ashok Kumar and respondent no. 2 Suresh Kumar have filed the suit for separate possession of the suit properties by way of partition. As per the averments in the plaint, both the plaintiffs were having 1/6th share each in the suit properties. Thus, they were claiming the separate possession of the suit properties by way of partition claiming their independent shares. Thus, it cannot be stated that plaintiff no. 1 Suresh Kumar, who has compromised with defendants during the pendency of the suit and has withdrawn the suit, was the main plaintiff in the suit as both the plaintiffs were claiming the separate possession of the suit property by way of partition on the basis of their independent shares. Thus, if plaintiff no. 1 as a result of some compromise with defendants has withdrawn the suit. The plaintiff no. 2 cannot be non-suited on that ground. It is for plaintiff no. 2 to consider as to whether he feels any necessity for the amendment of the plaint or not.

9. Case Soumik Sil Vs. Subhas Chandra Sil (Supra) relied upon by learned counsel for the petitioners is quite distinguishable on facts. That was a suit for declaration. As a result of the orders passed by the Hon'ble High Court, the possession of the disputed property was handed over to the defendant by plaintiff no.1 of that case in terms of that order and thereafter, the suit was rendered infructuous. Whereas, in

the instant case, the plaintiff no.2 can still independently claim the partition of the suit property on the basis of his share in the joint property.

10. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order calling for the interference by this Court while exercising the supervisory powers under Article 227 of the Constitution of India.

11. Resultantly, the present revision petition having, no merits, is hereby dismissed.

21.01.2016

S.khan

**(DARSHAN SINGH)
JUDGE**