

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

CR No.4614 of 2013
Decided on: 20.01.2016

Subhash Chand & ors.

.... Petitioners

versus

Ram Singh & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. J.P.Sharma, Advocate
for the respondents.

Amit Rawal, J. (Oral)

The petitioners-plaintiffs are aggrieved of the order dated 18.07.2013 (Annexure P-3) whereby the application invoking the provision of Order 23 Rule 1 and Order 1 Rule 8(4) read with Section 151 of the Code of Civil Procedure for withdrawal of the prayer/claim for declaration and permission to continue with the claim vis-a-vis permanent injunction has been declined.

Learned counsel appearing for the petitioners-plaintiffs submits that the evidence vis-a-vis injunction and declaration had been led. Since the suit claiming declaration by way of adverse possession in view of the law laid down by this Court in ***Bhim Singh & ors. vs. Zile Singh & ors., 2006(3) RCR (Civil) 97*** is not maintainable. An application, in this regard, seeking permission to withdraw their claim regarding declaration was filed. The filing of the fresh suit would entail costs of litigation as the petitioners-plaintiffs do not intend to lead any fresh evidence.

Learned counsel appearing for the respondents-defendants submits that the suit had reached at the stage of final arguments. The

forementioned application seeking liberty to withdraw claim qua

declaration is not permissible under the law. He further submitsthat there is no issue viz-a-viz the relief of permanent injunction, therefore, the suit for declaration and permanent injunction is not maintainable and prays for dismissal of the present petition.

I have heard learned counsel for the parties and perused the file with their assistance.

The present revision deserves to be allowed for the following reasons:

The plea of adverse possession can not be taken in affirmation only but in the defence in view of the judgment of this Court passed in Bhim Singh's case (supra). It is settled proposition of law that where parties are alive they can move an application at any stage of trial in support of their respective claims in the absence of framing of specific issue. The trial court cannot decide the controversy much less relief vis-a-vis permanent injunction. The impugned order allowing the petitioners-plaintiffs to withdraw entire suit in my view would result into repetitive trial and wastage of time much less valuable time of the Court. Rather the act of the Court is to minimize the litigation and decide the case as expeditiously as possible.

Keeping in view the aforementioned facts, the impugned order is set aside. The petitioner shall not lead any fresh evidence. The application filed on behalf of the petitioners-plaintiffs invoking the provision of Order 23 Rule 1 and Order 1 Rule 8(4) read with Section 151 of the Code of Civil Procedure is allowed.

Revision petition stands allowed.

20.01.2016
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(Amit Rawal)
Judge