

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 22, 2016

1. Civil Revision No.5554 of 2015

Gaje Singh & others

...Petitioners

Versus

Jagpal Singh & others

...Respondents

2. Civil Revision No.7154 of 2015

Gaje Singh & others

...Petitioners

Versus

Jagpal Singh & others

...Respondents

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

Present: Mr.Vikram Singh, Advocate and
Mr.Abhinav Sood, Advocate,
for the petitioners in both the petitions.

Mr.Harkesh Manuja, Advocate,
for respondent No.2 in CR No.5554 of 2015

AMIT RAWAL, J. (Oral)

By this common order, I intend to dispose of two revision petitions bearing No.5554 and 7154 of 2015, which have been filed at the instance of the petitioner-defendants as the common questions of law and fact are involved in both the petitions.

Civil Revision No.5554 of 2015 has been filed against the order dated 20.5.2015, whereby the application for recalling of the order dated

21.7.1988, vide which the Lower Appellate Court on the basis of the statement made by the counsel regarding the compromise, disposed of the appeal. The aforementioned judgment and decree was assailed by the petitioners in this Court by filing Regular Second Appeal No.2918 of 1988, which, by formulating the question with regard to the maintainability of the appeal and arriving at a compromise, much less suffering the statement, was dismissed.

Mr.Vikram Singh, learned counsel for the petitioners submits that in view of the observations recorded in the order dated 14.12.2010, the application for recalling of the order was filed *de hors* of the fact that the order dated 14.12.2010 passed in the Regular Second Appeal was assailed before the Hon'ble Supreme Court in SLP No.CC-8366 of 2011, which was dismissed vide order dated 13.5.2011 (Annexure P-4). Arriving of the compromise and withdrawal of the appeal by the counsel is not in consonance with the ratio decidendi culled out by the Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society Versus Balwan Singh**, 2015 AIR (SC) 2867. The Court has not assigned any reasons and dismissed the application primarily on the ground that the petitioners have already lost upto the Hon'ble Supreme Court and, thus, urges this Court for setting-aside the impugned order.

Per contra, Mr.Harkesh Manuja, learned counsel for respondent No.2 in Civil Revision No.5554 of 2015 submits that the issue of arriving at a compromise and suffering of a statement at the behest of the counsel, which was also signed by Rameshwar son of defendant Gaje Singh, was debated/pondered upon by the Court by formulating the question, which was answered against the appellants and, therefore, the application in hand

was not maintainable. Even principle of *res judicata* to the misc.application applies.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the findings arrived at by this Court in the aforementioned Regular Second Appeal, leave no manner of doubt that the relief urged in the grounds of appeal has been sought, in essence the power of withdrawal of the appeal, much less suffering statement by the counsel or one of the son of the defendant and, thus, in my view, the petitioners cannot pick up the lines from the order according to their convenience. The judgment cited by Mr.Vikram Singh would not be applicable in this case.

Accordingly, in my view, the application was wholly misconceived, much less was not even maintainable as it would tantamount to re-agitating the issue, which is already settled. Resultantly, no ground for interference is made out.

Revision petitions stand dismissed.

December 22, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No