

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No.6434 of 2014(O&M)
Date of Decision:18.1.2016**

Balwinder Singh

---Petitioner

vs.

Sukhwinder Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Prateek Pandit, Advocate
for the petitioner

Mr. Vivek K.Thakur, Advocate
for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal,J.

The present petition lays challenge to order dated 11.8.2014 (Annexure P-1) passed by the Civil Judge (Junior Division), Kapurthala whereby the application filed by the petitioner/plaintiff under Order XXIII Rule 1(3) of the Code of Civil Procedure (in short "CPC") for withdrawal of the suit with permission to file a fresh one on the same cause of action has been dismissed.

Counsel for the petitioner contends that the petitioner filed a suit for permanent injunction restraining the respondent-defendant from

dispossessing the petitioner forcibly and illegally from land measuring 13 kanals 19 marlas, detailed in the head note of the plaint. After framing of issues, the parties were called upon to produce their evidence and the petitioner adduced his evidence. The petitioner engaged another counsel and he informed him that in the written statement filed by the respondent-defendant, he has raised a plea that sale deed dated 25.6.2010 has been executed in his (defendant) favour and, therefore, the petitioner is required to file a suit for declaration to assail the said sale deed as Balbir Sing son of Inder Singh, a co-sharer has sold property to Navdeep Kaur, vendor of the defendant by way of specific khasra numbers whereas the land is joint and has not been partitioned. It is further argued that as the petitioner has an apprehension that his suit for declaration to assail the sale deed may be barred by the provisions of Order II Rule 2 CPC, he filed the instant application seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action but has been wrongly rejected by the trial court.

Counsel for the respondent has submitted that as the petitioner filed a simpliciter suit for injunction restraining the defendant/respondent from ousting him from the suit land by force or unlawful means, there was no reason for the trial court to allow the permission prayed for as the application filed by the petitioner does not fall within the purview of Order XXIII Rule 1(3) CPC.

I have heard counsel for the parties, perused the records and find no merit in the petition.

Order XXIII Rule 1(3)CPC being relevant in the present

context is quoted thus:-

“ Where the court is satisfied,—

- a) that a suit must fail by reason of some formal defect,
or
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

Counsel for the petitioner is not in a position to convince the Court as to how his case is covered under clause (a) or (b) of sub Rule (3) of Rule 1 of Order XXIII CPC. The mere fact that the defendant in the written statement has pleaded his ownership on the basis of sale deed executed in his favour by one of the co-sharers and the petitioner intends to challenge the said sale deed is not a contingency prescribed under the aforesaid provision to permit the petitioner to withdraw the suit with permission to file a fresh one on the same cause of action. This apart, the cause of action to file a suit for declaration to assail the sale deed propounded by the defendant would be different from what has been averred and claimed in the suit for permanent injunction.

In this view of the matter, I do not find any error much less illegality in the impugned order as would call for intervention. However, the petitioner is at liberty to take recourse to appropriate remedy in accordance with law to assail the sale deed propounded by the

respondent/defendant.

Petition stands disposed of accordingly.

(Rekha Mittal)
Judge

18.1.2016
paramjit