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

CR-7668-2015

Date of decision : 25.01.2016

Raj Kumar Arora

...Petitioner

Versus

Ramesh Kumar Arora and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Rampal, Advocate
for the petitioner.

Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwal, Advocate
for respondents No.5 to 7.

Mr. Ravi Kumar, Advocate
for respondent Nos.9 to 11.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the order
whereby the application under Order 23 Rule 1 of the Code of
Civil Procedure (hereinafter called 'CPC') for withdrawal of the

suit with permission to file fresh one, has been declined.

Mr. Rahul Rampal, learned counsel appearing on behalf of the petitioner, submits that Durga Dass and his sons has formed a firm streamline. The land measuring 1037 square yards was purchased by five brothers and another land measuring 2225 square yards was purchased in the name of the Company i.e. M/s Residency Builders (P) Ltd. Durga Dass died in the year 1982-83. In agreement dated 22.08.2005 pertaining to the land measuring 2225 square yards, 1/6th share of the petitioner-plaintiff was held to be intact. The other brothers did not respect and honour the said agreement, instead illegally transferred his share in favour of present respondents-defendants No.5 to 7. In these circumstances, the suit aforementioned for rendition of the accounts was filed. However, during the pendency of the suit, an application seeking amendment of the plaint incorporating the relief of declaration was moved, but the same was declined and upheld by this Court. He further submits that until and unless, the act of the other brothers is not challenged by seeking an appropriate relief, the suit as framed was not maintainable and, therefore, sought indulgence for withdrawal of the same with permission to file fresh one.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Amandeep Singh Talwal, learned counsel appearing on behalf of respondents No.5 to 7, submits that there is a categoric finding by

this Court in the order dated 30.01.2015 passed in **CR No.4724 of 2013**, whereby the amendment sought was ex facie barred by the law of limitation. In case, the plaintiff is permitted to withdraw the present suit and file fresh one, it would be amount to circumventing the order aforementioned, which is not permissible.

Mr. Ravi Kumar, learned counsel appearing on behalf of respondent Nos.9 to 11 submits that the order is perfectly legal and justified and no interference is required in the order.

I have heard the learned counsel for the parties and appraised the paper book.

The plaintiff has failed to seek the specific performance, viz-a-viz, his share which was allegedly kept intact. The suit for rendition was filed on 08.10.2009, even the amendment incorporating the relief of declaration has also been held to be barred by the law of limitation. No explanation, much less, reasons have been assigned in the application as to which relief suit the plaintiff contemplates to seek by filing fresh suit. In case, he contemplates to challenge the alleged transfer that has also been transferred, much less, specific performance of the agreement, both the reliefs are barred by the law of limitation. The trial Court should not be burdened with litigation and the party alleging the grievance has extinguished his right to agitate the same.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned order declining the

application and the same cannot be said to have been passed without jurisdiction.

With the aforesaid observations, the revision petition is dismissed.

25.01.2016
yogesh

(AMIT RAWAL)
JUDGE