

Civil Revision No.7653 of 2012

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

Civil Revision No.7653 of 2012

Date of decision: 12.01.2016

Dayanand and another

....Petitioners

Versus

Ratti Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the 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 ?

Present: - Mr. Vikas Sharma, Advocate, for the petitioners.
Mr. Bhupinder Singh, Advocate, for respondent No.2.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 04.09.2012 (Annexure P-1) passed by Civil Judge (Junior Division), Panipat, whereby application under Order 23 Rule 1 read with Section 151 of the Code of Civil Procedure for permission to withdraw the suit due to formal defects, filed by petitioners and respondents No.3 and 4/plaintiffs, has been dismissed.

Brief facts of the case are that petitioners and respondents No.3 and 4 filed a suit for declaration and permanent injunction to the effect that plaintiffs No.1 to 3 are the owners of ½ share and plaintiff No.4 – Ramesh is the owner of ½ share of agricultural land measuring 12

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kanals 6 marlas and names of defendants have been wrongly entered as *gair marusi* in the revenue record. Case was at preliminary stage. On 29.05.2012 plaintiffs moved an application under Order 23 Rule 1 read with Section 151 CPC seeking permission to withdraw the suit with liberty to file fresh one on the same cause of action after removing the formal defects and technical flaws in the drafting of the plaint. Trial Court vide order dated 04.09.2012 has dismissed the application for withdrawal of the suit. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that plaintiffs want to withdraw the suit on the ground that suit was filed against a dead person; secondly, *shamilat panna Gujran* has been impleaded as defendant through a wrong person without filing the list of co-sharers; thirdly, sale deed vasika No.2859 dated 04.10.1979 is the main bone of contention, but it could not be mentioned that it is fictitious and illegal sale deed; and fourthly, the vendor Nawab son of Ismile son of Sh. Nanak resident of Village Sutana has not been impleaded as defendant. Trial Court has dismissed the application without making any reference to these defects by merely stating that these are not formal defects. Therefore, the impugned order is liable to be set aside.

On the other hand, learned counsel for respondent No.2 contended that the order passed by learned trial Court is just and legal as the application was filed with an intent to harm, harass and cause

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wrongful loss to the defendants.

I have considered the contentions raised by learned counsel for the parties.

Be that as it may, once the pleadings are to be amended and LRs are to be impleaded, instead of moving number of applications, it is appropriate for the Court to allow withdrawal of the suit. The abovestated defects apparently appear to be formal in nature which can go to the root of the case. This Court in ***Karam Kaur v. Dalip Singh, 2001(2) Civil Court Cases 9***, has held that suit against a dead person is nullity as it suffers from formal defect and the Court should grant permission to withdraw the same with liberty to file fresh on the same cause of action. The property which has been shown as *panna* should be impleaded through relevant person and list of co-sharers is also required to be given.

In view of above, impugned order is set aside and revision petition is allowed. Plaintiffs are allowed to withdraw the suit to file fresh one on the same cause of action after removing formal defects, subject to costs of Rs.20,000/- to be deposited with the Haryana State Legal Services Authority.

(Paramjeet Singh Dhaliwal)
Judge

January 12, 2016
R.S.