

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7671 of 2014

Date of Decision:- 16.02.2016

Kanta Devi and others

....Petitioners

Versus

Ramesh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Chanderhas Yadav, Advocate,
for petitioners.

Mr. D.K.Tuteja, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside the order dated 06.09.2014 (Annexure P-8) whereby application under Order 23 CPC of petitioner was dismissed and order dated 01.10.2014 (Annexure P-9) vide which prayer for liberty to file the fresh suit was declined.

2. Relevant facts of the case that petitioners had filed suit for declaration with consequential relief of permanent injunction. An application was filed under Order 23 Rules 1, 3(a) (b) CPC for withdrawal of the suit with liberty to file afresh on the same cause of action as the petitioners wanted to take the plea that defendants had encroached upon the entire land after dispossessing them. Respondents contested the said application. Earlier also plaintiffs filed an application for amendment under Order 6 Rule 17 CPC and thereafter withdrew the same. Again application for amendment under Order 6 Rule 17 CPC was filed and thereafter

application under Order 23 Rules 1, 3(a)(b) was filed without any basis. The Court below while considering the submissions made by learned counsel for the parties dismissed the application for grant of permission to file fresh suit on the same cause of action. Thereafter, plaintiffs made statement before the Court for withdrawal of the suit. At the time of arguments learned counsel for plaintiffs submitted that he be given permission to file fresh suit. The Court dismissed the suit having been withdrawn and as regard to permission to file the fresh suit, plea was taken that order was passed that the said application has already been dismissed on 06.09.2014.

3. Learned counsel for the petitioners submitted that order dated 06.09.2014 whereby application for permission to file fresh suit on the same cause of action was erroneously decided and the said application should have been allowed. Reliance was placed upon view taken by Co-ordinate Bench of this Court in case Vinod Kumar Vs. Gurmail Singh and another 2012(1) RCR (Civil) 539 and Amar Singh Vs. Kashmiri Lal 2009(2) RCR (Civil) 173.

4. Learned counsel for respondents submitted that as per submissions made by learned counsel for plaintiffs on 01.10.2014 before the Court below, suit was simply withdrawn and the Court dismissed the suit as such and the present petition is not maintainable.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that petitioners have challenged the orders simultaneously i.e. firstly, the order passed by the Court below on 06.09.2014 and secondly the order passed by the Court below on 01.10.2014. The subsequent order dated 01.10.2014 has been

passed on the basis of statement made by learned counsel for plaintiffs wherein suit was simply withdrawn and even there was no statement by learned counsel for plaintiffs to grant liberty to file the fresh suit. The said statement was in Hindi and English translation of the same is as under:

Statement of Sh. S.M.Nandal counsel for the plaintiff
(without oath).

Stated that defendants have taken possession of the suit land and he is to file a suit for possession. Plaintiff does not want to proceed with the present suit and present suit be dismissed as withdrawn and as such permission be granted.

RO&AC

(Neha Yadav)

Sd-

Civil Judge (Jr. Divn.)

1/10/2014

Rohtak

6. Earlier prayer for permission to file fresh suit was separately taken vide detailed order dated 06.09.2014. In light of factual matrix of the present litigation that earlier permission to file fresh suit on the same cause of action having been declined by the Court below and thereafter withdrawal of the suit as per statement of counsel for plaintiff without even seeking liberty to file fresh suit, renders the present petition meritless. In the light of the peculiar facts of the case, where plaintiff himself has chosen to withdraw the suit without seeking any permission in the statement makes it clear that there was no intention of the plaintiff even to seek liberty to file the suit on the same cause of action.

7. In view of the above, present petition is without any merit and same stands dismissed.

February 16, 2016

mohan

(SHEKHER DHAWAN)
JUDGE