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

CR-8085-2014

Date of decision : 03.05.2016

Surjit Singh

... Petitioner

Versus

Manmeet Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anup Gautam, Advocate
for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate
for respondent Nos.1 to 4.

Mr. Puneet Sharma, Advocate
for respondent No.5.

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-defendant is aggrieved of the impugned order dated 14.10.2014, whereby an application filed under Order 23 Rule 1 of the Code of Civil Procedure seeking withdrawal of the suit having suffering from inherent defect, has been allowed.

Mr. Anup Gautam, learned counsel appearing on behalf of the petitioner-defendant submits that during the pendency of the matter, compromise was arrived at between the LRs of Defendant No. 1, namely, Nirmal Singh and in this context, the respondent(s)-plaintiff(s) moved an

application. He further submits that there was no declaration sought with regard to the judgment and decree obtained by Nirmal Singh qua shop and therefore, the suit was not suffering from any inherent defect and at the best, the respondent(s)-plaintiff(s) can seek the amendment of the plaint qua pleadings in paragraph Nos. 7 and 8, thus, urges this Court for setting aside of the impugned order, under challenge.

Mr. Puneet Jindal, learned Senior Counsel assisted by Ms. Sakshi, learned counsel appearing on behalf of the respondent Nos.1 to 4 submits that lot of changes are required to be made in the suit viz-a-viz the relief as multi-fold relief was sought in the plaint. No harm would be caused, in case, the order, under challenge, is allowed to be sustained. Even, as per the provisions of Order 23 Rule 1 (3) (b) CPC, in case, suit is suffering from inherent defect, the party can always seek the permission to file fresh suit. The present case squarely falls within the provisions of the Code of Civil Procedure, thus, urges this Court for affirming the findings rendered in the impugned order, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the aforementioned order, under challenge, is not sustainable as on going through the plaint, no relief has been sought for challenging the decree obtained by Nirmal Singh, it is only averment in the paragraph 7 and 8 of the plant. In view of the subsequent events i.e. compromise having taken place, during the pendency of the suit, the respondent(s)-plaintiff(s) at the best shall be entitled to seek the amendment of paint, but not withdrawal of the suit as the suit had reached at the stage of plaintiff's evidence, for, the issues were framed on 10.07.2013. Filing of the

fresh suit would entail into service of the petitioner-defendant again and the entire process has to be initiated again. Much time of the Court has already been spent on this aspect.

In view of the aforementioned facts and circumstances of the case, the impugned order dated 14.10.2014, under challenge, is not sustainable and hereby set aside.

However, respondent(s)-plaintiff(s) shall be at liberty to seek the amendment of the plaint in accordance with law, in case, such application is filed, petitioner-defendant shall not oppose the same.

Accordingly, the revision petition stands allowed.

03.05.2016
yogesh

(AMIT RAWAL)
JUDGE