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

**Civil Revision No.8390 of 2016 (O&M)
Date of Decision: 13.12.2016**

SWARAN KAUR

.....Petitioner

Vs

GURBACHAN SINGH & ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. O.P. Hoshiarpuri, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner seeks to challenge order dated 16.08.2016 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Ferozepur vide which prayer for recalling of order dated 22.10.2009 was dismissed.

[2]. Admittedly in a suit for declaration filed by Swaran Kaur against her brothers namely Gurbachan Singh, Sukhmander Singh and Naginder Singh, a compromise was effected on 22.10.2009, whereby plaintiff Swaran Kaur relinquished her rights in the property of her father in favour of her brothers. The suit was ultimately dismissed as withdrawn after recording her

statement.

[3]. Subsequently, Swaran Kaur filed an application for recalling of the order dated 22.10.2009 on the basis of fraud. Reference to the events was made in para no.4 of the application. Said application was contested by the respondents.

[4]. It is relevant to mention here that an independent suit has already been filed by Swaran Kaur assailing the compromise on the basis of fraud. In that civil suit, part evidence has already been recorded. The trial Court dismissed the application for recalling of the order dated 22.10.2009 on the premise that an independent suit has already been filed by the petitioner, therefore, the application in question became infructuous.

[5]. It is a settled principle of law that all questions are to be decided in the same suit in terms of Order 23 Rule 3-A CPC, but if the compromise is challenged on the basis of fraud, then independent suit can be maintained. Since fraud vitiates all solemn acts, bar on filing subsequent suit on the basis of fraud is not attracted.

[6]. Admittedly, the petitioner has already filed independent suit, assailing the compromise, therefore, in considered opinion of this Court, there cannot be any error of jurisdiction in the

order dated 16.08.2016 passed by the trial Court, nor the same has suffered with any perversity. This revision petition is accordingly dismissed.

December 13, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No