

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

CR No.2381 of 2015 (O & M)
Date of Decision:20.12.2017

Gopi Ram and others

...Petitioners

Versus

Bhaga and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Atul Lakhanpal, Senior Advocate with
Mr. Rajwant Singh Chahal, Advocate
for the petitioners.

Mr.C.B. Goel, Advocate
for respondent No.1.

Mr. Sharad Kumar Yadav, DAG, Haryana.

ANIL KSHETARPAL, J.

Defendant Nos.4 to 6 are in the revision petition against order dated 12.01.2015 permitting the plaintiff to withdraw the suit against defendant Nos.4 to 6 i.e. petitioners.

Plaintiff filed a suit for permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiff as a tenant at Will on land measuring 15 kanals and 7 marlas. Plaintiff had further claimed that allotment of land by Sub Divisional Officer (Civil)-cum- Prescribed Authority, Fatehabad is fictitious and has lapsed after a period of twelve years.

Civil Court issued notice. Defendant Nos.4 to 6 filed their written statement. Defendant Nos.4 to 6 also filed their reply to the injunction application filed by the plaintiff.

At that stage, the plaintiff moved an application before the

learned trial Court for permitting the plaintiff to withdraw the suit against defendant Nos.4 to 6. The aforesaid application has been allowed by the learned trial Court vide its impugned order dated 12.01.2015.

Petitioners are aggrieved of the aforesaid order.

I have heard learned counsel for the parties at length and with their able assistance gone through the paper book.

It is not disputed that predecessor-in-interest of the defendant Nos.4 to 6 was allotted land in dispute after it was declared surplus. It is the assertion of the defendant Nos.4 to 6 that they had already deposited the allotment money with the Department and possession of the land was delivered to them. Defendant Nos.1 to 3 are State of Haryana and its officials. The real contest in the suit was between the plaintiff and defendant Nos.4 to 6.

Learned Court has allowed the application only on the ground that the plaintiff is dominus litis and, therefore, the plaintiff being master of his suit is entitled to withdraw the suit against the petitioners.

In the considered opinion of this Court, the view taken by the learned trial Court was not correct. Once the plaintiff had filed a suit impleading six defendants including defendant Nos.4 to 6 and they had filed their written statement contesting the suit and the application for injunction, the Court could not have allowed withdrawal of the suit with respect to some of the defendants without examining the controversy involved in the suit.

Order 23 Rule 3 CPC, no doubt permits withdrawal of a suit or abandonment of the part of the claim. However, it is not obligatory for the

Court to allow such application once the application is not bona fide.

The Court is required to examine whether the application filed by the plaintiff abandoning his claim in the suit against any of the defendants is bona fide or not. In the present case, the learned trial Court has failed to consider this aspect of the matter.

Defendant Nos.4 to 6 claimed their right on the basis of allotment and validity thereof is being disputed by the plaintiff. Such being position, the dispute cannot be adjudicated upon unless and until defendant Nos.4 to 6-petitioners are party to the litigation. Defendant Nos.4 to 6 had already filed their written statement. State of Haryana and its officials had also made a statement that they adopt the written statement filed by defendant Nos.4 to 6. It has also come on record that the plaintiff had filed CWP No.1440 of 1983 to get the suit land declared as tenant permissible area. The aforesaid writ petition was dismissed by the High Court on 22.09.2004.

In these circumstances, the order passed by the learned Civil Judge (Senior Division), Fatehabad allowing the plaintiff to withdraw the suit with respect to defendant Nos.4 to 6 is not sustainable. In view thereof, the order under challenge with respect to permitting the plaintiff to withdraw the suit qua defendant Nos.4 to 6 is set aside. Defendant Nos.4 to 6 will continue to be the party defendants in the suit.

Hence this revision petition is allowed.

20.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No