

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

CR No.6261 of 2017

Date of decision : 15.09.2017

Gurdwara Committee Village Bhangala and another

...Petitioners

Versus

Suba Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.D.S Jatana, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs are in revision petition against the order passed by the trial Court refusing the permission to withdraw the suit with a permission to file fresh one.

Plaintiffs had filed a suit for permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiffs over the land measuring 544 kanals and 4 marlas. It was further prayed that the defendant be restrained from dispossessing the plaintiffs forcibly and illegally from the property.

Plaintiffs availed as many as 15 opportunities to lead evidence. When the case was almost at the fag end as the defendant had also closed his evidence, an application was filed under Order 23 Rule 1 Sub-Rule 3 CPC for permission to withdraw the suit with a liberty to file fresh one on the same cause of action.

Order 23 Rule 1, Sub-Rule 3 CPC is extracted as under:-

“1. Withdrawal of suit or abandonment of part of claim.-

(3) Where the court is satisfied,—

- a) that a suit must fail by reason of some formal defect, or*
- b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim”*

From the reading of Sub-Rule 3 of Rule 1 of Order 23 CPC, it is clear that a suit can be permitted to be withdrawn with a liberty to file fresh one on the following two points:-

- i) Where the Court is satisfied that a suit must fail by reason of some formal defect.
- ii) There are sufficient ground to allow the plaintiff to institute a fresh suit.

In the present case, the entire argument of the learned counsel for the petitioners is that since the plaintiffs did not file a suit for declaration and had only filed a suit for permanent injunction, therefore, there is formal defect. He has further submitted that there are other sufficient ground for permission to withdraw the suit under Clause 2 of the Sub-Rule 3 of Rule 1 of Order 23 CPC.

I have considered the submission of the learned counsel and with his able assistance gone through the documents available in the paper book.

In my considered opinion, the suit is not suffering from any formal defect. The suit for injunction on the basis of ownership and possession is maintainable. In the present case, the parties have already led their evidence. The suit was instituted more than four years back.

In these circumstances, I do not find any good ground to interfere with the discretion exercised by the trial Court.

Revision petition is dismissed.

15.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No