

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No.664 of 2017

Date of decision: 01.02.2017

**Maghar Singh and another**

**... Petitioners**

**Vs.**

**Amarjit Kaur and another**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. Binderjit Singh, Advocate  
for the petitioners.

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**RAMESHWAR SINGH MALIK, J. (ORAL)**

Feeling aggrieved against the impugned order dated 23.11.2016 (Annexure P-20) passed by the learned trial Court, permitting the plaintiffs-respondents to withdraw their suit for permanent injunction with liberty to file fresh one with better particulars and in appropriate form under the changed circumstances, defendants have approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioners.

It is a matter of record that learned trial Court earlier permitted the plaintiffs-respondents to withdraw their suit with liberty to file fresh one, vide its order dated 17.05.2014. However, the said order came to be challenged by the present petitioners before this Court by way of Civil Revision No.4925 of 2014. The order dated 17.05.2014 (Annexure P-16) was set aside by this Court

vide its order dated 15.12.2015 (Annexure P-17), however, observing therein that said order passed by this Court will not preclude the plaintiffs from filing an application seeking withdrawal of their suit with liberty to file fresh one, in accordance with law.

The relevant observations made by this Court in its order dated 15.12.2015 (Annexure P-17), at page 78-79 of the paper book, read as under: -

*“The Impugned order does not point out any formal defect in the suit of the plaintiffs, nor the Court has come to the conclusion that the suit is likely to fail on such formal or technical defect which is a condition precedent for allowing the plaintiffs to withdraw the suit with liberty to file fresh.*

*Permission to allow a suit at such a stage of the litigation particularly in the absence of application under Order 23 Rule 1 CPC, in considered opinion of this Court was the minimum requirement. The defendants should have been called upon to file objection against such a move of the plaintiffs.*

*Having considered the impugned order, I am of the view that the impugned order is totally non-speaking in terms of requirement of Order 23 Rule 1 CPC. The same is cryptic and violative of principles of natural justice. Consequently, the impugned order is set aside.*

*However this order will not preclude the plaintiffs from filing any application in accordance with law. In case such an application is filed the same shall be decided by the trial Court in accordance with law.*

*With this observation this revision petition is allowed.”*

In compliance of the abovesaid order passed by this Court, plaintiffs-respondents filed their fresh application vide Annexure P-18 and after referring to the abovesaid order in para No.1, plaintiffs-respondents took the following averments in para 2 of their application: -

*“That during the pendency of the suit, the defendants have taken unauthorized possession of Gair Mumkin Abadi 01 Kanal 14 Marlas in dispute owned and possessed by the plaintiffs and due to formal defect in the above titled suit, the plaintiffs don't want to pursue the above titled suit in the Hon'ble Court and want to withdraw their suit. Therefore in the interest of justice the plaintiffs be permitted to file fresh suit after permitting the plaintiffs to withdraw the above titled suit in its place, which will be filed in respect of Abadi in dispute and against the defendants Maghar Singh and Jaggar Singh.”*

No doubt, the petitioners-defendants denied the abovesaid averments taken by the plaintiffs. However, learned trial Court, while referring to abovesaid order passed by this Court as well as the earlier order dated 17.05.2014 passed by the learned trial Court, rightly allowed the application of the plaintiffs-respondents, permitting them to withdraw their suit for permanent injunction with liberty to file a fresh suit with better particulars and in appropriate form, keeping in view the changed circumstances of the case. Thus, in view of the totality of facts and circumstances of the case noticed hereinabove, this Court is of the considered opinion that learned trial Court committed no error of law, while passing the impugned order and the same

deserves to be upheld.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order. Further, no prejudice, as such, has been shown, which might have been caused to the petitioners or likely to be caused to them, by passing the impugned order. It goes without saying that onus would always be on the plaintiffs to prove their case by leading cogent evidence, in accordance with law. Under these circumstances, it can be safely concluded that learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in the impugned order dated 23.11.2016 (Annexure P-20) passed by the learned trial Court, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

**[ RAMESHWAR SINGH MALIK ]**  
**JUDGE**

01.02.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No