

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

**Civil Revision No.7223 of 2015 (O&M)
Date of decision: 09.10.2017**

Sadhu Singh

.....Petitioner

Versus

Ram Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr.S.S. Majithia, Advocate,
for respondent Nos. 1 to 3.

Mr. Ramesh Goyal, Advocate,
for respondent No.4.

Ritu Bahri, J.

Challenge in this petition is to the order dated 04.08.2015 (Annexure P-5) passed by the Civil Judge (Junior Division), Barnala, whereby application (Annexure P-3) filed by plaintiffs-respondent Nos.1 and 2 under Order 23 Rule 1 of the Code of Civil Procedure (for short 'CPC') for permission to withdraw the suit with liberty to file fresh one, has been allowed.

Plaintiffs-Ram Singh and Jarnail Singh (respondent Nos.1 & 2 herein) son of Kehar Singh filed a suit for declaration and possession of the land measuring 18 Kanals 18 Marlas, which was owned by defendant No.3-

Cooperative Society, to the extent of 2/3 share being legal heirs of late

Kehar Singh, who was member of the said society. They had also sought relief of permanent injunction restraining defendant Nos.1 and 2 from alienating the land to any person or giving possession to any third person.

A perusal of the plaint shows that dispute was between the sons of Kehar Singh and Sant Singh alias Sat Singh alias Nachhattar Singh son of Bhag Singh. Father of plaintiffs namely Kehar Singh was member of the society and certain khasra numbers had been allotted to him for cultivation. Later on, the land was acquired for New Township, New Grain Market, Barnala and a dispute had arisen that Kehar Singh had issued a General Power of Attorney in favour of Sadhu Singh-defendant No.1 (petitioner). Upon notice of the suit, defendant No.1 filed his written statement, wherein he controverted the claim by plaintiffs-respondent Nos. 1 and 2. Thereafter, plaintiffs filed an application (Annexure P-3) for withdrawal of the suit with permission to file fresh one, which was allowed vide impugned order dated 04.08.2015 (Annexure P-5).

Grievance of the petitioner is that after receiving notice on the above said suit, he had filed his written statement. No cause was made out to give liberty to the plaintiffs to file fresh suit on the same cause of action. Moreover, the above mentioned application has been allowed without giving notice to defendant No.1-petitioner.

Under order 23 Rule 1 CPC, the Court has discretion to grant liberty to the plaintiffs to file fresh suit, if the Court is satisfied that there is a formal defect in the suit. Since the dispute is between real brothers with regard to inheritance of the property of their father, the trial Court has rightly granted permission to the plaintiffs to withdraw the suit with permission to file fresh one.

No ground is made out to interfere in the impugned order.

Dismissed.

09.10.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No