

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

**CR NO.7243 of 2015 (O&M)
Date of Order:25.08.2017**

The Schedule Caste Cooperative Land Owning Society Ltd.
..Petitioner

Versus

Gurwinder Singh and ors
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prashant Bansal, Advocate,
for the petitioner.

Mr. S.S. Sarwana, Advocate,
for respondent Nos. 1 and 2.

Mr. Samrat Ahuja, Advocate for
Mr. A.K. Ahuja, Advocate
for respondent No. 3.

ANIL KSHETARPAL, J (Oral)

Plaintiff has filed Civil Revision under Article 227 of the Constitution of India against order dated 18.04.2015 (Annexure P-6).

Plaintiff had filed a civil suit for declaration challenging mortgage deed dated 03.12.2008 executed by defendant No. 1 in favour of defendant No. 3. The suit was filed on 13.03.2010. After filing of the written statement, issues were framed on 31.08.2013. Plaintiff availed numerous opportunities to lead evidence and examined two witnesses on its behalf. Thereafter, plaintiff filed an application for amendment of the plaint which was dismissed. Revision petition against the aforesaid order was also dismissed.

Thereafter, plaintiff filed an application for permission to withdraw the suit with liberty to file a fresh one on the same cause of action.

The aforesaid application has been dismissed by the trial Court vide order dated 18.04.2015. Relevant extract of the order is as under:-

“After hearing rival contentions of both the parties and have gone through the record on the file, I agree with contention of learned counsel for the defendants. Plaintiffs have filed the present suit on 13.3.2010 and answering defendants appeared upon notice on 16.8.2010 and filed written statement on 16.11.2010 wherein fact of execution of sale deed and general power of attorney were mentioned, hence it can not be said that facts have been concealed by the answering defendants. Perusal of the file shows that issues in the present case were framed on 31.08.2013 and thereafter, plaintiffs availed numerous opportunities and examined two witnesses till 17.04.2014 and then filed the present application for production of original sale deed on 26.05.2014 and filed the present application on 17.3.2015. However, it is unexplained by the plaintiffs that why they have kept mum for such a long period. Ld. Counsel for the applicants has relied upon judgment of case titled as Sunita Chhokra Vs. Shanti Devi & Ors, 2014 (Suppl.) CCC-309, another judgment of case titled as Vinod Kumar Vs. Gurmail Singh and another, 2012(1) RCR (Civil) and also judgment of case titled as Narain Vs. Rewati, 2005(1) CCC-386 (P&H). Perusal of the file shows that facts of the law relied upon the applicants have failed to prove any technical defect in the present case on the basis of which they seek permission to withdraw the present suit. In view of the facts and circumstances of the case and above said discussion, the present application is devoid of any merits and same is hereby dismissed.”

I have heard learned counsel for the parties at length and with their able assistance gone through the documents available in the paper-book. Learned counsel for the petitioner has submitted that the plaintiff wanted to challenge the General Power of Attorney and other documents executed by defendant No. 1. He submits that the suit would fail if such documents are not challenged.

On the other hand, learned counsel for respondent No. 3 has supported the order passed by the trial Court. He has submitted that the suit was instituted on 13.03.2010 and remained pending before the trial Court for a period of five years. Thereafter, the plaintiffs filed the application for permission to withdraw the suit with liberty to file fresh one on same cause of action.

A suit can be permitted to be withdrawn under Order 23 Rule 1 CPC, 1908 with permission to institute a fresh suit in respect of subject matter of such suit. Order 23 Rule 1 CPC is extracted as under:-

“[1 . Withdrawal of suit or abandonment of part of claim— (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(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.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission

referred to in sub-rule (3),
he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]”

It is clear from Order 23 Rule 1 (3) that permission to withdraw the suit with liberty to institute a fresh suit in respect of same subject matter can only be granted in two eventualities.

- i) Where the Court is satisfies that the suit must fail by reason of some formal defect.
- ii) Where there are sufficient grounds for allowing the plaintiff to institute a fresh suit for a subject matter of a suit for a part of claim.

The case of the petitioner-plaintiff does not fall in any of the eventualities envisaged by Order 23 Rule 1(3). The suit was filed in the year 2010. Plaintiff has already led some evidence. Therefore, there is no error in the order passed by the learned trial Court.

Accordingly, the revision petition is dismissed.

August 25, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No