

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

CR No.7343 of 2017 (O&M)

Date of Decision: 31.10.2017

Bharpur Singh

... Petitioner

Versus

Azim Basif and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arihant Jain, Advocate,
for the petitioner.

ANIL KSHETARPAL, J. (ORAL).

The plaintiff/petitioner Bharpur Singh is in revision petition against the order dated 03.10.2017.

It is the allegation of the petitioner that Azim Basif-defendant had entered into an agreement to sell with 4 persons, namely, Jagtar Singh, Bharpur Singh (petitioner), Kulwant Singh and Jaswant Singh. It is alleged that as per the agreement to sell, the sale deed was to be executed within a period of 3 months from the date of final order on mutation. Jagtar Singh and Bharpur Singh filed a suit for permanent injunction on 30.01.2009. It was asserted in the plaint that the defendant-Azim Basif had refused to execute the sale deed. The suit for injunction remained pending for more than 8 years.

At this stage, it may be mentioned here that during the pendency of the appeal, Jagtar Singh one of the plaintiffs had settled the dispute with Azim Basif and had withdrawn his appeal.

Bharpur Singh-petitioner filed an application under Order 23 Rule 1 read with Section 151 CPC for withdrawal of the suit with the permission to file a fresh one on the same cause of action. The aforesaid application has been declined by the learned trial Court. As per Order 23 Rule 1 CPC, the suit can be permitted to be withdrawn with permission to file a fresh one, only if the Court is satisfied that the suit must fail by the reason of some formal defects or there are sufficient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.

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.”

Learned counsel for the petitioner submitted that since the remaining 3 agreement holders, namely, Jagtar Singh, Kulwant Singh and Jaswant Singh have colluded with Azim Basif, therefore, he has a right to withdraw the suit and file a fresh suit on the same cause of action. Learned

counsel for the petitioner submits that he wants to file a suit for specific performance of the agreement to sell.

I have considered the submission of the learned counsel for the petitioner.

In the opinion of the Court, the prayer made in the application does not fall within the four corners of Order 23 Rule 1 Sub-rule (3) CPC. The present suit is only for injunction. The suit was instituted in the year 2009. The parties have already led their evidence. It is further pleaded in the plaint that the defendant had refused to execute the sale deed and honour the agreement. Thus, prima facie the cause of action for filing the suit for specific performance had already arisen when the suit for injunction was filed.

Still further, merely because 3 agreement holders have colluded, that would not give the cause of action to the petitioner to file an application for withdrawal of the suit with permission to file a fresh one.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the order passed by the learned trial Court. However, observations made by this Court while deciding the revision shall not be construed as an expression on the merits of the case.

The revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

31.10.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No