

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 821 of 2009(O&M)

Date of Decision: 17.08.2017

Shamsher Kaur & another

...Appellants

Vs.

Gram Panchayat village Shermajra

...Respondent

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: None.

RAJIV NARAIN RAINA, J. (Oral)

1. This appeal was filed in November 2008. On the first date of its listed hearing i.e February 19, 2009, a request was made for an adjournment. The case was adjourned and is still after nine years in motion hearing. Even before the matter was heard for preliminary hearing, an application was filed by the appellant bearing CM No. 3243-C of 2009 under Order 23 Rule 1 CPC for withdrawal of the suit with liberty to file a fresh suit on the same cause of action. Respondent Gram Panchayat on receiving notice of the application [but not main appeal] filed a reply to the application contesting the prayer seeking dismissal of the application.

2. The respondent has stated in its reply that the statement made, by the appellant that Arjun Singh predecessor-in-interest of the plaintiff was entitled to be compensated in the form of land, for parting with his share in the disputed agricultural well, the value of which was calculated at ₹ 78.63 paisa in consolidation terms was an incorrect statement. It was further incorrect that the value is worked out as per quality of land acquired or its value in case of share in the well. It is further incorrect that value worked out as to be converted into the area of land by which the Gram Panchayat has been benefited.

3. It is further asserted in the reply that plaintiff-appellant has failed to prove in the suit that the predecessor-in-interest of the plaintiff is a mortgagee of Gram Panchayat land for a sum of ₹ 78.63 paisa in consolidation terms and that he has possession of the land. The reply was filed on December 01, 2009.

4. The applicant/appellant has not filed a replication to rebut the stand in the reply. In these circumstances, no case is made out to grant leave to the plaintiff to withdraw Civil Suit No. 710 dated December 11, 1996 and permit him to change track and start trial a fresh in case liberty is granted to him to file a fresh suit. The evidence recorded in the Courts below cannot be overwritten or wished away in a fresh suit and therefore, I find nothing in the main appeal or in the request under Order 23 Rule 1 read with Section 151 CPC and would dismiss the application as well as the appeal. Since counsel has not come forward to address the arguments, I have considered the case and perused the paper book while on the dais.

5. I have no doubt that the application as well as appeal deserves to be dismissed. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

17.08.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>