

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

**CR No.1095 of 2018(O&M)
Date of Decision: 16.10.2018**

Inderjit Singh

.....Petitioner

Versus

Prabhjot Singh

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. A.K. Walia, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 11.12.2017 passed by Additional Civil Judge (Senior Division), Sangrur vide which application under Order 23 Rule 1 CPC was allowed thereby granting permission to withdraw the suit and to file fresh suit on the same cause of action.

[2]. The suit for permanent injunction was filed on 02.12.2014, wherein issues were framed on 09.05.2017. The first application under Order 6 Rule 17 CPC filed by the plaintiff

for amendment of the plaint was allowed on 31.03.2016, Thereafter, plaintiff filed another application for amendment of the plaint under order 6 Rule 17 CPC and the same was allowed on 02.08.2016. Necessary amended plaint was also filed on both the counts.

[3]. Thereafter, the application was filed under Order 23 Rule 1 CPC for withdrawal of the suit with permission to file fresh suit on the same cause of action on 25.10.2017. Para Nos.3 and 6 of the application are necessary to be quoted herein:-

“3. That taking advantage of the absence of Prabhjot Singh plaintiff and that his General Attorney is also not keeping good health and is taking and under treatment at PGI, Chandigarh, defendant has changed the position at the spot by making alteration/encroachments wrongly and illegally, which has also resulted in withdrawal of the appeal filed by the plaintiff-applicant against the order dismissing the injunction application.

6. That it is apparent from the plaint that there is formal defect in the same and now position has also been changed by the defendant who has no right or title in the suit land and thus in the plaint accordingly amendments are to be made for removal of encroachment and claim possession, which may change the nature of the suit and thus non-pleading of the ponit may prove a technical impediment in grant of

relief to the plaintiff-applicant.

[4]. The grievance of the petitioner was that in view of alleged encroachment during pendency of the suit, suit for possession is required to be filed.

[5]. The application was resisted by the defendant/petitioner by filing reply to the application. Para Nos.3 and 6 of the reply are to the following effect:-

“3. That the para No.3 of the application as alleged is wrong and hence denied. The khasra No.45/1 measuring 5-9 was never cultivated before filing of the present suit. The useless plants have grown in this area. In this situation the contention of the plaintiff that the actual position at the spot has been changed is totally incorrect, because the application under Order 39 Rule 1 and 2 CPC filed by the plaintiff/applicant has been dismissed and the appeal against the same was withdrawn by the plaintiff/applicant from the Court of Ld. Additional District Judge, Sangrur on 10.10.2017. The plaintiff/applicant is a very intelligent and clever person. In order to prolong the proceeding in the suit he got the adjournment of the same date from the Courts in the appeal and the suit, so that no proceeding may be recorded in this Hon'ble Court. As regard the factum of treatment of plaintiff at PGI is totally incorrect. The plaintiff has not stated as to for which disease he is getting treatment at PGI and whether he is fit to walk/move due to disease and has not submitted any proof regarding his disease. From the date of filing of

the suit, i.e., 02.12.2014 till today, i.e. 02.11.2017 the plaintiff/applicant has never come present in the Hon'ble Court and neither he ever signed the applications filed in the Hon'ble Court. It is felt that the present suit has been filed by Attorney Rajbir Singh of his own. And for this reason Rajbir Singh never came present in the Hon'ble Court.

6. That the para No.6 of the application as alleged is wrong hence denied. The plaintiff/applicant had filed the suit on 02.12.2014 and thereafter on 17.05.2016 and 29.09.2016 he got amended the suit and corrected everything. Therefore, the contention of the plaintiff/applicant that there is formal defects in the plaint is incorrect. What defect had occurred in the pleading of the plaint, nothing has been mentioned. The plaintiff/applicant only wants to harass the answering defendant. After 02.12.2014 (date of filing of suit) is filing applications on each and every date. Due to which the issues in the suit were framed on 09.05.2017 and 2 ½ years and thereafter plaintiff has examined three witnesses in the Court and in the Zimni Order dated 31.08.2017 the Hon'ble Court has clarified that the plaintiff/applicant shall complete his evidence on 15.09.2017, but on that date the plaintiff/applicant did not produce any evidence and on the next dated 10.10.2017 fixed for plaintiff evidence, the counsel for the plaintiff/applicant intentionally got the next date as 10.10.2017 in the Appellate Court in the absence of the answering defendant so that due to requisition of the file, no evidence could be led. On 10.10.2017 plaintiff/applicant withdrew the appeal and the date

fixed in the Hon'ble Court was 26.10.2017. On 26.10.2017 the plaintiff/applicant neither himself appeared nor the draftsman appeared as witness and rather filed the present application in the Court which is sheer abuse of the administration of Justice. The Hon'ble Supreme Court has issued instructions to curtail this kind of litigation. In this regard reliance is placed on 2016(3) RCR Civil, page 942-SC.

[6]. Perusal of the impugned order would show that the grounds on which the application under Order 23 Rule 1 CPC has been resisted have not been adverted to in the impugned order by the trial Court.

[7]. At this stage, it would be just and appropriate to direct the trial Court to re-visit the order dated 11.12.2017 passed by Additional Civil Judge (Senior Division), Sangrur and decide the application afresh in accordance with law without being influenced by any of the observations made hereinabove.

[8]. Both the parties are directed to appear before the trial Court on 02.11.2018.

[9]. Disposed of.

October 16, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**