

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1284 of 2014

Date of Decision: January 30, 2018

Romesh Chand

...Petitioner

Versus

Surjit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sunny K. Singla, Advocate,
for the petitioner.

Mr.Gurvinder Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order, whereby the application moved by the respondent-plaintiff under Order 23 Rule 1 read with Section 151 CPC seeking liberty of the Court to withdraw the suit for declaration whereby he had claimed the exclusive ownership and possession of the agriculture land, i.e., the suit property described in the head-note of the plaint by seeking cancellation of the sale deed dated 10.2.1997 in favour of the petitioner-defendant, had been allowed.

Mr.Sunny K. Singla, learned counsel for the petitioner-defendant submits that the provisions of Order 23 Rule 1 CPC were not attracted as there was no formal defect in the suit. The Court below had abdicated in granting the permission to withdraw the suit as the explanation given in the application was that the sale deed dated 10.2.1997 was not executed by the plaintiff himself but by his son Bikar Singh. The application was highly belated as it was moved at the stage of plaintiff's evidence. The

suit vis-a-vis the other son was, thus, barred by the provisions of Order 2 Rule 2 CPC. Had the aforementioned provisions and the law taken into consideration, the application was liable to be dismissed.

Per contra, Mr.Gurvinder Singh, learned counsel for the respondent-plaintiff submits that there is no limitation for claiming the title in the property as the sale deed executed was not only on behalf of the plaintiff but his son Bikar Singh and the same was based on certain fraud having been played upon the plaintiff. The aforementioned defect would have definitely come in their way at an appropriate stage and, therefore, rightly the application was moved. No prejudice has been caused to the petitioner-defendant. He would be in a position to raise all the possible objections in case a fresh suit is filed and, thus, urges this Court for maintaining the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner-defendant. The language of Order 23 Rule 1 CPC is clear and unambiguous. In my view, the case of the respondent-plaintiff was falling with the aforementioned provisions as concededly the sale deed was not executed by the respondent-plaintiff but by both the persons and the suit by one of the executant was not maintainable. Instead of moving the application for impleadment, he sought the remedy of withdrawal of the suit with liberty to file a fresh one on the same cause of action. In my view, the suit was suffering from an inherent defect and rightly so, the application has been allowed. In case of filing a fresh suit, the petitioner-defendants would have a right to take all possible objections qua maintainability and other usual objections, which can be

taken into consideration by the trial Court at an appropriate stage.

For the aforementioned reasons, the order is perfectly legal and justified. No ground for interference is made out. Resultantly, the revision petition is dismissed.

January 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No