

CR-155-2016 (O&M)
Date of Decision: 04.07.2018

Balbir Kaur

.....Petitioner

versus

Surinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Parvinder Singh, Advocate
for the petitioner.Mr. Puneet Jindal, Senior Advocate with
Mr. Nitish Garg, Advocate
for respondent No.1.**DEEPAK SIBAL, J. (ORAL)**

Through the present petition challenge is made to the order dated 09.10.2015 (Annexure P-5) passed by the Civil Judge (Junior Division) Shaheed Bhagat Singh Nagar (for short the Trial Court) through which the respondent No.1/plaintiff was permitted to withdraw the suit after giving her liberty to file a fresh suit on the same cause.

The brief facts which are required to be noticed are that respondent No.1 had filed a suit seeking therein a declaration that she along with defendants No.1 to 4 in the suit be declared owners in joint possession of the land described in the head note of the plaint. Permanent injunction to restrain the defendants from selling, alienating, transferring the suit land, from raising any construction thereupon and digging earth therefrom, was also prayed for. Notice of the suit was issued to the defendants therein.

However, when the matter was at the stage of evidence respondent No.1 filed an application under Order 23 Rule 3 CPC read with Section 151 CPC for withdrawal of the suit on the ground of formal and technical defects in the framing of the same with leave of the Court to file a fresh suit on the same cause. Such application was allowed by the Trial Court through the order dated 09.10.2015 which is under challenge in the present proceedings.

At the very outset, learned senior counsel appearing for respondent No.1 submits that he has no objection if the impugned order is *set aside* for the reason that respondent No.1 had already filed an application before the trial Court seeking restoration of the suit withdrawn by her.

Learned counsel for the petitioner does not dispute the above statement made by learned counsel for respondent No.1.

In view of the above peculiar facts, the impugned order is *set aside* and the Trial Court is directed to take an appropriate decision, in accordance with law, on the application filed by respondent No.1 seeking restoration of the suit withdrawn by her.

(DEEPAK SIBAL)
JUDGE

04.07.2018
Neha

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No