

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 2256-2016(O&M)
Date of decision: 17.01.2018

Shobha Ram

.....Petitioner

versus

Pardeep and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.N.Lohan, Advocate for the petitioner
Mrs.Sandeep Sahu, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner has impugned the order dated 18.2.2016 (Annexure P4), passed by learned Civil Judge (Junior Division), Narwana, vide which, application under Order 6 Rule 17 read with Section 151 CPC has been dismissed.

I have heard learned counsel for both the parties.

Learned counsel for the petitioner states that he had filed a suit for declaration that he is the owner and in possession of 1/3rd share of land in dispute on the basis of the registered Will dated 8.11.1971 executed by Shivram son of Bhoora in his favour. Learned counsel for the petitioner has pointed out that in para no.1, plaintiff has mentioned that he is owner and in possession of the disputed property. Similar averment is made in para no.2 (e). However, a contradictory plea was taken in para no.4 and 5 that defendants have unauthorizedly taken the possession after May 2014 and that possession of the defendant is unauthorized and illegal. It is contended

that both the pleas taken in the plaint are contradictory. Petitioner wants to remove these contradictions to claim that he is owner and in possession.

After arguing for sometime, learned counsel for the petitioner states that in view of the contradiction, he may be allowed to withdraw the suit with permission to file a fresh one on the same cause of action after taking appropriate pleas in the said suit.

Keeping in view the fact that plaintiff wants a comprehensive amendment to remove the contradiction in the plaint, in place of deciding on the validity of the impugned order, permission is hereby granted to the petitioner under Order 23 Rule 1 CPC to withdraw the suit with permission to file a fresh one on the same cause of action subject to payment of Rs.5000/- as cost to the respondent-defendants. If such suit is filed, limitation will not come in the way of the decision of the said suit on merits.

The present petition stands disposed of accordingly.

17.01.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned: Yes

Whether Reportable: No