

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 2327-2017 (O&M)
Date of decision: 12.02.2018

Sher Singh and others

.....Petitioners

versus

Nagar Council, Sunam and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kanwal Goyal, Advocate for the petitioners
Mr.S.K.Yadav, Advocate for the respondent no.1
Mr.G.S.Dhillon, DAG Punjab

- 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)

Impugned in the present revision is the order dated 20.3.2017 (Annexure P1), passed by learned Additional District Judge, Sangrur, vide which, application of the petitioner to withdraw the suit under Order 23 Rule 1 (3) CPC with liberty to file a fresh one on the same cause of action was dismissed.

Heard.

Learned counsel for the petitioner states that he had filed a suit for permanent injunction in a representative capacity, which was dismissed by learned Additional Civil Judge (Senior Division), Sunam vide judgment and decree dated 28.8.2014 (Annexure P5), inter-alia, on the ground that declaration should have been sought and mere simple injunction is not sufficient. In the appeal, the plaintiff filed an application for amendment of the plaint to seek relief of declaration which was declined by the lower

Court and affirmed by this Court. Now, an application has been filed to withdraw the appeal and the suit with liberty to file a fresh suit seeking declaration.

I am of the view that it is always open to the plaintiff to claim before appellate Court that the relief of declaration was not required and plaintiff is satisfied with the relief of simple injunction. The plaintiff claims injunction on the basis of the title. Therefore, the said claim has to be decided by the Court. The amendment seeking declaration is already disallowed. Therefore, it is required that appeal should have been decided on merits and should not be allowed to withdraw so as to start a fresh round of litigation.

The present petition is dismissed with above noted observations.

12.01.2018

gk

Whether speaking/ reasoned:

Yes

Whether Reportable:

No

(Kuldip Singh)
Judge