

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

CR No.2825 of 2016

Date of decision : 23.05.2018

Kawal Jeet Kaur

..... Petitioner

versus

Trilochan Singh alias Tirlok Singh

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr Rajinder Goyal, Advocate for the petitioner.

Mr.Rakesh Gupta, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The present revision is directed against the impugned order Annexure P-5 dated 25.3.2016 whereby the application submitted by the petitioner-plaintiff for withdrawing the statement dated 6.11.2013 made by the counsel for the petitioner whereby the relief of possession sought in the suit was ordered to be withdrawn.

Mr.Rajinder Goyal, learned counsel appearing on behalf of the petitioner submitted that the petitioner-plaintiff instituted the suit for declaration with consequential relief of possession on the ground stated therein. However, during the pendency of the aforementioned suit the counsel suffered following statement:-

“Statement of Shri Vaibhav Nirwani, counsel for plaintiffs

Stated that the land in dispute of which defendant No.1 is the Karta of HUF and whose member is plaintiff, possession is of herself. The sale deed executed by defendants is in collusion with each other so as to damage the rights of plaintiff, which is

not binding upon the right of the plaintiff, but during the life time of coparcener only declaration can be sought and apart from that relief of possession cannot be claimed. In this view of the matter, delete the relief of possession and will claim the relief of possession at the time of division of HUF and will claim after the death of Karta (entire statement except abandonment of relief of possession objected to)

*Sd/-
Civil Judge(Jr.Div)
Ist Class*

*RO AC Sd/-
Vaibhav Nirwani”*

However, vide Annexure P-3 dated 16.03.2016 an application was submitted for withdrawal of the statement suffered by counsel but when the plaintiff engaged the services of another counsel it realised that there was no substance in the suit for continuing with the relief for possession. The aforementioned application was contested by the respondent-defendant and ultimately resulted in the dismissal of the application. He has stated that no harm and prejudice would be caused to the respondent as the plaintiff was ready to pay the damages.

Per contra, Mr. Rakesh Gupta, learned counsel appearing for the respondent submitted that on receipt of the notice of the suit the defendants submitted an application under Order 7 rule 11 CPC for rejection of the plaint. for it was wanting the payment of ad valorem court fee. In order to avoid the payment of court fee, counsel for the plaintiff-petitioner made the aforementioned statement giving up the relief of possession and therefore the defendant-respondent withdrew the application under Order 7 Rule 11 CPC. He thus prayed for dismissal of the petition.

I have heard learned counsel for the parties and perused the record and find force and merit in the submissions made by learned counsel for the petitioner, for, the statement of the counsel was neither on the basis of affidavit nor instructions of the petitioner. It is settled proposition of law that a counsel cannot make such a statement which may prejudice the case of his/her client. This view is fortified in view of the judgment of full Bench decision of Hon'ble Supreme Court in case of **Himalayan Cooperative Group Housing Society vs Balwan Singh, 2015 AIR(SC) 2867**. The Court should not have dismissed the application as the plaintiff-dominus litus can always modify his suit in any manner he likes before leading evidence. However, it is made clear that till the relief of possession is sought, no ad valorem court fee had been paid. That relief would be available to plaintiff only if he makes the deficiency of court fee good within a period of two months of the date of receipt of a certified copy of this order.

Petition stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

23.05.2018

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No