

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

**CR No.2439 of 2018 (O&M)
Date of Decision: April 18, 2018**

Smt. Kalawati

...Petitioner

Versus

Beer Singh (deceased) through his LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

FATEH DEEP SINGH, J.
Heard.

The present petitioner Kalawati, initially co-plaintiff with present performa respondent/Kiran Devi had together as plaintiffs earlier filed suit for declaration and permanent injunction which suit stood dismissed with costs through judgment dated 11.5.2017 of the Court of learned Civil Judge, (Junior Division) Rewari. Upon filing an appeal before the learned District Judge, Rewari by both the unsuccessful plaintiffs, an application under Order 23 Rule 1 CPC was moved by them for permission of withdrawal of the suit and appeal with liberty to file the same afresh on the same very cause of action. The precise grounds were that they were illiterate, rustic village ladies and were not versed with complex legal procedure and for want of proper legal advice could not challenge the consent decree dated 01.10.1983 nor could implead Vijay Singh, Satpal and

their wives as party to the suit and, therefore, formal defect had occurred and, hence, the prayer in question.

It is through impugned orders dated 08.03.2018 Annexure P/5 the application and the prayer stood declined and that is how the present petition has come about.

Appreciating the submissions of the learned counsel for the petitioner, the controversy revolved around Will dated 6.9.1973 and consent decree dated 01.10.1983 and plaintiffs failed to challenge the latter consent decree passed in civil suit No.441 of 1983. The Court upon considering at length the pleas of the plaintiffs before declining them the relief and dismissing their suit after they have put in appearance on merits. Through the instant application the revisionist seek to reopen the entire controversy by taking fresh pleas much to the prejudice to the other side and, thereby, taking another chance through such misuse of the process of the Court. The provisions of Order 23 Rule 1 CPC are based on policy not to give opportunity to litigant to abuse the process of the Court. Though, in certain circumstances they could be permitted to withdraw the suit with liberty to file fresh, however, subject to showing sufficient grounds. However, by doing so, at this juncture after having tasted defeat the revisionist would be defeating right that have accrued to the opposite side and, thus, there was no sufficient ground to allow the same. The Court below has given a well reasoned finding that it would tantamount to improper use of discretionary powers that vests in the Court under these provisions which have to be exercised with due care and caution and has sought to comment upon the very motive behind such recourse purely to

defeat the decree that has been passed against them.

In the light of the same, the impugned order is certainly correct appreciation of law and facts and there is no illegality and perversity necessitating intervention by this Court. Thus, the present revision petition being hopelessly without any merits stands dismissed with special cost of Rs.10,000/- which will be deposited with Free Legal Aid Clinic, Rewari.

(FATEH DEEP SINGH)
JUDGE

April 18, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No