

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR No.398 of 2014 (O&M)

Date of decision: 08.05.2018

Mohinder Pal and others

..... Petitioners

Versus

Goverdhan Dass and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Dinarpur, Advocate and
Mr. Apoorv Sangwan, Advocate
for the petitioners.

Mr. Avnish Mittal, Advocate
for respondents No.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court dated 18.12.2013 dismissing the application under Order 23, Rule 1(3) of the Code of Civil Procedure filed for permission to withdraw the suit with liberty to file fresh one.

Learned trial Court has noticed that there is no formal defect in the suit and non-joinder of a necessary party cannot be considered as formal defect. A reading of the order shows that the suit was instituted on 22.05.1992. The defendants filed their written statement on 03.02.1993 and it was pointed out that the property is owned and possessed by Dera Fakir Udasian. Thereafter, the parties went to the trial and the suit was decreed on 29.01.1997. The defendants filed the first appeal which was accepted.

The case was remanded back to the learned trial Court vide order dated

22.02.2001. The plaintiff after remand of the case by the learned First Appellate Court filed an application for permission to withdraw the suit with liberty to file fresh one on the same cause of action. The application was allowed by the Court which was set aside by this Court vide order dated 25.07.2013.

Now fresh order has been passed by the learned trial Court dismissing the application while recording that non-impleading of a necessary party, if any, shall not be formal defect and therefore, the suit cannot be permitted to be withdrawn with liberty to file fresh one.

Learned counsel for the petitioners has relied upon the judgment passed by this Court reported as 2006(2), RCR (Civil), 160 titled as 'Sant Baba Darshan Singh Sewak Baba Kharak Singh Vs. School Beerh Baba Budha Sahib and others' to contend that non-impleading of necessary party is a formal defect. This Court has gone through the aforesaid judgment and the aforesaid judgment is in the context when the suit was instituted by a incompetent person who has not been properly authorized on behalf of the religious institution. Hence, the aforesaid judgment has no application.

In view of the discussion made above, this Court does not find any good ground to interfere with the order passed by the Court.

Revision petition is dismissed.

08.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No