

235

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

**Civil Revision No.4837 of 2016 (O&M)
Date of Decision: 08.08.2018**

**KARTAR SINGH (NOW DECEASED) THRU LRS. JASWANT
SINGH AND KULWANT SINGH**

.....Petitioners

Vs

HARPAL KAUR & ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vivek Gupta, Advocate
for the petitioners.

Mr. R.S. Bains, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners are aggrieved of the order dated 08.07.2016 passed by the Civil Judge (Jr. Divn.) Sunam whereby the application for reviewing the order dated 15.05.2012 was dismissed.

[2]. Plaintiffs filed a suit for permanent injunction to the effect that he is owner of the house in dispute. Restraint order was sought against defendant No.1 from alienating the house.

[3]. During pendency of the suit, plaintiffs suffered a

statement after the death of their grandfather that they had already filed a separate suit before the trial Court, therefore, they do not want to proceed with the suit and the same be dismissed as withdrawn. Specific statement made before the Court on oath by the plaintiffs namely Jaswant Singh and Kulwant Singh on 15.05.2012 reads as under:-

“Stated that after the death of our grandfather Kartar Singh, we being legal heirs/successors, filed the suit for possession and permanent injunction before the Addl. Civil Judge (Sr. Divn.) for our rights. In the said suit we have got the relief of injunction, hence we don't want to pursue this case because there is no need for the same. If needed in future we reserve our right to file the case afresh. It is prayed that the suit may kindly be allowed to be withdrawn.”

[4]. Perusal of the aforesaid statement would show that the same was not unconditional withdrawal prayed by the plaintiffs, rather they pleaded for reservation of right to file fresh suit in future if need be.

[5]. The trial Court passed the order dated 15.05.2012 on the resistance shown by the defendants. The trial Court allowed withdrawal of the suit by observing that the plaintiffs have prayed for withdrawal of the suit at the fag end of the trial intentionally and they have no concern with the suit property. Thereafter the suit was allowed to be withdrawn subject to

payment of costs of Rs.5,000/-.

[6]. Learned counsel for the petitioners submitted that once a qualified statement was made before the trial Court for reservation of right to file fresh suit on the same cause of action in future if need be, then the withdrawal of the suit with permission to file fresh is in-built mechanism on the strength of **Lal Singh vs. Ajit Singh and Anr., 2008(3) R.C.R. (Civil) 650.**

The observations made by the trial Court that the suit was being withdrawn intentionally at the fag end of the trial and the plaintiffs have no concern with the suit property were totally unwarranted as the permission to withdraw the suit would entail grant of permission for filing fresh suit on the same cause of action. Even if, the plaintiffs have already filed earlier suit on the same cause of action, the decision of the said suit is not relevant for the purposes of deciding the present *lis* between the parties.

[7]. Learned counsel further submitted that as per Order 23 Rules 1 and 4 CPC, the plaintiffs are entitled to leave or relinquish any part of the claim. The defendants cannot compel the plaintiffs to prosecute the suit by opposing the prayer for withdrawal except to claim cost for filing the suit against them and putting them in the litigation. The application for expunging the remarks in the order dated 15.05.2012 has already been

dismissed by the trial Court.

[8]. Having considered the issue, I am of the view that the remarks given in the order dated 15.05.2012 are totally unwarranted and the same are accordingly expunged. This revision petition is accepted. Both the parties are at liberty to avail their remedies in accordance with law. However, the plaintiffs have compelled the defendants to contest unnecessary litigation for which they can be burdened with adequate cost. An amount of Rs.10,000/- as costs in addition to the costs as imposed by the trial Court would be paid to the defendants/respondents.

[9]. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

August 08, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No