

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

Civil Revision No.4573 of 2017 (O&M)

Date of decision: May 17, 2018

Ratti Ram and another

...Petitioners

Versus

Municipal Committee Cheeka and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Liberhan, Advocate
for the petitioners.

Ms.Nupur Choudhary, Advocate
for respondent No.1.

None for respondents No.2 and 3.

Mr.S.K.Mahajan, Advocate
for respondent No.4.

INDERJIT SINGH, J.

Petitioners Ratti Ram and Gurdial Singh have filed this revision petition against Municipal Committee Cheeka and other respondents under Article 227 of the Constitution of India for setting aside the order dated 29.03.2017 passed by learned Addl. Civil Judge (Senior Division), Guhla.

Notice of motion was issued. Learned counsel for respondents No.1 and 4 appeared and contested the petition. None appeared on behalf of respondents No.2 and 3 despite service.

I have heard learned counsel for the parties and have gone

through the record.

From the record, I find that Ratti Ram and Gurdial Singh plaintiffs, filed a suit against Municipal Committee Cheeka and other defendants for declaration with the consequential relief of permanent injunction. During the pendency of the suit, an application under Section 151 CPC dated 04.01.2017 was moved by the plaintiffs seeking withdrawal of the suit with liberty to file fresh suit. It is stated in the application that plaintiffs want to withdraw the present suit due to some technical fault as the claim of the plaintiff also lies against BDPO Cheeka, who was necessary party in the present suit and claim of the plaintiffs and public at large, is also pending consideration before the BDPO. With these averments, it was prayed that permission be given to plaintiffs to withdraw the suit and to file fresh one.

Upon notice, defendants No.1 to 3 filed reply and it is stated that the application is not maintainable. The plaintiffs are habitual litigants and have already been ejected from the suit land and the possession has already been taken from the plaintiffs and now they have no concern with the suit land. It is further stated that BDPO Cheeka, is neither proper nor necessary party in the case as the land is situated within the municipal limits of Cheeka Municipality. Defendant No.4 filed its separate reply and mainly stated the same facts as stated by defendants No.1 to 3. It is further stated that plaintiffs are free to file separate suit against BDPO etc.

Learned Addl. Civil Judge (Sr. Divn.), Guhla, vide order 29.03.2017, dismissed the application.

Aggrieved from the above-said order, present revision petition has been filed.

From the record, I find that no formal defect in the suit has

been pointed out in the application. Mere non-joining of one party cannot be held as formal defect. The plaintiffs can file the application for impleading a party and it can be allowed, if that party is found to be necessary or proper party. Otherwise also, the plaintiffs have a right to file separate suit against that defendant. As non-joining of one of the party is not a formal defect, therefore, no permission can be granted to the plaintiffs to withdraw the suit and to file fresh suit on the same cause of action.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 29.03.2017 passed by learned Addl. Civil Judge (Sr. Divn.), Guhla, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. applications, if any, also stand disposed of.

May 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No