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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7027-2014 (O&M)

Date of decision : 29.05.2018

Ritu Ahluwalia and another

... Petitioner(s)

Versus

Rajeev Ahluwalia and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.L. Sharma, Advocate
for the petitioner.

Ms. Ekta Saini, Advocate for
Ms. Ekta Thakur, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 08.09.2014, whereby an application for withdrawal of the suit with permission to file fresh one, had been dismissed.

Learned counsel appearing on behalf of the petitioners submitted that the petitioners-plaintiffs instituted the suit for declaration to the effect that Prem Singh Ahluwalia, resident of House No.37, Village Butrela, Post Office Badheri (U.T.) Chandigarh, could not execute the Will dated 01.02.2002 in favour of the defendants owing to the reasons mentioned therein. The defendants contested the suit on various grounds. During the pendency of the suit, the petitioners filed an application for amendment of the plaint on the premise that the defendants had propounded a subsequent Will dated 27.12.2002. However, an application for

amendment was submitted, which was dismissed vide order dated 01.08.2014. It is, in that aspect of the matter, a cause of action accrued to seek the withdrawal of the suit, thus, urges this Court for setting aside the impugned order, under challenge.

Learned counsel appearing on behalf of the respondents-defendants submitted that the plaintiffs miserably failed to lead evidence in support of the pleadings, as the factum of the subsequent Will dated 27.12.2002 was disclosed in the written statement filed on 28.11.2006 and the application for amendment was moved much later i.e. on 14.07.2014, which was dismissed on 01.08.2014, whereas the present application for withdrawal of the suit was submitted at the stage when the plaintiffs had already led their evidence, for, the suit was instituted on 19.09.2006, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Sharma, for, concededly the suit laying challenge as noticed above to the Will dated 01.02.2002, though the onus is always on the propounder of the Will and the factum of the subsequent Will dated 27.12.2002 was disclosed in the written statement filed on 28.11.2006. No explanation had come forth in not seeking the amendment as late as in 2014 and when such application was moved, the same was dismissed. The present application for withdrawal of the suit was filed at the stage when the plaintiffs had concluded the evidence. It is too late in a day to allow such application as the plaintiffs miserably failed to prove formal defect despite having the knowledge way back in the year 2006.

As an upshot of my observations, no ground is made for interference, much less, the order cannot be said to be suffering from infirmity or without jurisdiction. Accordingly, the present revision petition is dismissed.

29.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No