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

**CR No.8164 of 2011
Date of Decision: 03.12.2018**

Satnam Singh and another

Petitioners

Versus

Beena Kumari

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Raina Sabharwal Thakur, Advocate
for the petitioners.

AVNEESH JHINGAN, J (Oral):

The present civil revision petition has been filed by the petitioners being aggrieved of the order dated 15.09.2018 passed by Civil Judge (Jr. Division), Dera Bassi [hereinafter referred to as 'trial Court'] allowing application of respondent/plaintiff to withdraw the suit with liberty to file afresh.

The brief facts are that respondent filed a suit for declaration to the effect that she is the owner in possession of House Plot No.412-A situated at Shivalik Vihar, Village Bhabat, Zirakpur, Tehsil SAS Nagar, Mohali. The suit was duly contested by the petitioner/respondents. During the pendency of the suit, an application was moved for appointing a Local Commissioner. The said application was dismissed.

When the respondent/plaintiff failed to get the desired relief in the said application, he filed a civil revision before this Court, which was also dismissed. The case of the respondent/plaintiff was that house in question was part of Khasra No. 54//20/1(4-19) and 25/2 (3-10) comprising in Khewat No.391 Khatoni No.432 situated at Shivalik Vihar, as per *jamabandi* of 2002-03. Whereas, the case of the petitioners/defendants was that the plot in dispute is situated at different Khasra number i.e. 66//4/1.

The case of the petitioners/defendants before the trial Court was that plot mentioned in the suit does not exist at all and it is not shown in the *jamabandi*. It was further alleged that respondent/plaintiff in collusion with Shivalik Vihar Sites Pvt. Ltd. got registered a sale deed regarding alleged plot No.412-413-414.

During the pendency of the suit, an application was moved by the respondent/plaintiff seeking permission to withdraw the suit with liberty to file afresh. The learned trial Court allowed the application with costs. Aggrieved of the said order, the present civil revision petition has been filed.

Learned counsel for the petitioners/defendants contends that once the application for demarcation was rejected during the pendency of the suit, the trial Court erred in allowing the respondent to withdraw the suit with liberty to file afresh. Moreso, without bothering that the suit was pending for almost seven years.

The contention raised by learned counsel for the petitioners lacks merit. The trial Court has decided the application in

right perspective. The trial Court took into consideration the fact that there is no dispute with regard to the ownership of the plot in dispute. The entire controversy is whether plot in question exists or not. As per the respondent/plaintiff, the plot was part of Khasra No. 54//20/1 (4-19) and 25/2 (3-10) comprising in Khewat No.391 Khatoni No.432 situated at Shivalik Vihar, as per *jamabandi* of 2002-03, whereas as per the petitioners/defendants, the plot is part of Khasra No. 66//4/1.

The respondent/plaintiff only wanted to demarcate her own land after withdrawal of the suit. There was a formal defect on account of respondent for not getting the suit land demarcated of her own, which is duly covered under Order XXIII of the Code of Civil Procedure, 1908.

No defect can be pointed in the impugned order. Moreover, as the ownership itself is not in dispute, no prejudice is caused to the petitioners/defendants by withdrawal of the suit with the permission to file afresh.

Needless to add, in case it is established, on demarcation, that plot in dispute does not exist, that would be an end to the litigation.

The civil revision petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

December 03, 2018

pankaj baweja

1. Whether speaking/ reasoned	:	Yes/ No
2. Whether reportable	:	Yes/ No