

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

124

RSA No.1795 of 2018 (O & M)
Date of Decision:17.04.2018

Gokal Chand

...Appellant

Versus

Satbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM-4916-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 13 days in re-filing the appeal is condoned.

Application is allowed.

CM-4917-C-2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in filing the appeal is condoned.

Application is allowed.

CM-4919-C-2018

Exemption as prayed for is allowed.

Main Case

Plaintiff No.1/appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court slightly modifying the judgment and decree passed by the learned trial Court.

Three plaintiffs had filed a suit for permanent injunction

claiming that they are in possession of the land as their forefathers were dohlidars. Prayer made in the suit is to restrain the defendants from interfering in their possession. During the pendency of the suit, plaintiff No.2 entered into a settlement with the defendants. The aforesaid settlement was produced on file as Ex.C-1 and pursuant thereto plaintiff No.2 withdrew the suit on her behalf on the basis of compromise deed dated 31.10.2011.

Learned trial Court without noticing the factum that plaintiff No.2 had already withdrawn the suit on the basis of compromise deed, decreed the suit in toto.

Defendants filed the first appeal. Learned First Appellate Court has affirmed the finding of the learned trial Court but has modified the decree passed after noticing that plaintiff No.2 has already entered into a settlement Ex.C-1 and on the basis thereof has already withdrawn the suit. Plaintiff No.1, as noticed, has filed this appeal against the aforesaid modification of the judgment passed by the learned trial Court by filing the present appeal.

Learned counsel for the appellant has vehemently argued that under Order 23 Rule 1 sub-rule (5) of the Code of Civil Procedure, one of the several plaintiffs could not abandon a suit or part of claim or withdraw suit or part of claim without consent of the other plaintiffs. He, thus submitted that the order passed by the learned First Appellate Court is erroneous.

This Court has considered the submission and with the able assistance of the learned counsel for the appellant gone through the judgments passed by both the Courts below.

In the considered opinion of this Court, the argument although on the first blush appears to be attractive, however, on close scrutiny does not stand scrutiny. The suit filed by plaintiff No.2 was not withdrawn or abandoned under Order 23 Rule 1 sub-rule (5) of the Code of Civil Procedure. Plaintiff No.2 had entered into a settlement with the defendants, which is Ex.C-1 on the file and pursuant to the aforesaid settlement, plaintiff withdrew the suit on this basis. Such compromise of the suit in part is permissible under Order 23 Rule 3 of the Code of Civil Procedure. Order 23 Rule 3 of the Code of Civil Procedure is extracted as under:-

“3. Compromise of suit-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit):

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court,

for reasons to be recorded, thinks fit to grant such adjournment.)

(Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.)

3-B. No agreement or compromise to be entered in a representative suit without leave of Court-(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation-In this rule, “representative suit” means-

(a) a suit under section 91 or section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is

not named as party to the suit.)”

A careful reading of the aforesaid provision, it is clear that the suit can be adjusted wholly or in part. Order 23 Rule 3 of the Code of Civil Procedure does not provide that there cannot be any compromise between one of the plaintiff. Order 23 Rule 1 sub-rule (5) of the Code of Civil Procedure is dealing with a provision with respect to withdrawal of the suit or abandonment of part of the claim.

In the present case, there was no abandonment of part of the claim. There was a compromise deed between the parties according to which plaintiff No.2 withdrew the suit.

Learned counsel for the appellant has further submitted that Smt. Shanti is also having other legal heirs. He submitted that, therefore, plaintiff No.2 alone could not entered into a compromise.

Other legal heirs of Smt. Shanti are not before this Court. Plaintiff No.1 has only filed the appeal. Plaintiff No.1 is not claiming to be legal heir of Smt. Shanti.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the judgment passed by the learned First Appellate Court.

Regular second appeal is dismissed.

17.04.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No