

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

228

**CR No.1413 of 2017(O&M)
Date of Decision:14.11.2019**

TARA CHAND

.....Petitioner

Versus

GURU DAYAL AND ORS.

.....Respondents

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

Present: Mr.B.S.Sudan, Advocate
for the petitioner.

Mr.R.K.Singal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has challenged the order dated 26.10.2016 passed by the Civil Judge (Jr.Divn.), Ambala, vide which prayer for restoration of the suit was dismissed.

The suit was dismissed as withdrawn vide order dated 1.12.2015 by passing the following order:-

“Today the case was fixed for evidence of the defendants. However, defendant No.1 Gurdial Singh appeared in person and made a statement that plaintiff shall not interfere in the house of the defendant where trees are standing and septic tank

and latrine/bathroom are situated.

In response, plaintiff Tara Chand has made a statement that keeping in view the statement/undertaking of defendant No.1, he withdraws the same. Statement of both the parties recorded separately. Both the parties are duly identified by their respective counsels.

Keeping in view the statement made by the plaintiff, the present suit is hereby dismissed as withdrawn. File be consigned to the record room after due compliance.”

Perusal of the aforesaid order shows that defendant No.1 made a statement in the Court that the plaintiff shall not interfere in the house of the defendant where trees and other super structures are situated. Thereafter, statement of the plaintiff was recorded, who stated that in view of undertaking given by defendant No.1, his suit be withdrawn. Statements of both the parties were separately recorded. Statement of Gurdial Singh reads as under:-

“Stated that plaintiff shall not interfere in my constructed house in which there trees are standing and Septic Tank, latrine and bath room also having constructed. Further I will not raise any construction beyond that.”

Perusal of the aforesaid statement would show that the plaintiff shall not interfere in the house of the defendant where trees etc. are standing and he will not raise any construction beyond that. Similarly, statement of the plaintiff was also recorded to the effect that on the basis of statement given by the defendant, his suit be dismissed as withdrawn.

Perusal of the aforesaid statements is on misleading note. On both the counts, undertaking of the plaintiff was recorded and that was given by defendant No.1 only. There was no such undertaking on behalf of the plaintiff that he will not interfere in the house of the defendant, where trees etc. are standing. In order to remove the aforesaid anomaly, trial Court was under obligation to spell out real intention of the parties in making statements before it.

In view of law laid down in **State of Maharashtra vs. Ramdas Shrinivas Nayak and another**, 1982 AIR (SC), 1249; **Commissioner of Customs, Mumbai vs. Bureau Veritas and others**, (2005) 3 SCC 265; **Jagvir Singh and others vs. State (Delhi Admn.)**, 2007 (3) RCR (Civil) 375 and **Om Parkash vs. Principal, Government Sr.Secondary School, Nilokheri and others** 2012 (19 RCR (Civil) 279, the plaintiff has rightly approached the same Court in the event of finding error while recording the order and the statements. It was incumbent upon the plaintiff himself to move an application for correction before

the trial Court. Having done so, trial Court was under legal obligation to act in accordance with law in order to give real meaning to the statements made before it. After withdrawal of the suit, the trial Court had become *functus officio*, therefore, the plaintiff was justified in apprising the Court about the anomalous situation on record.

In view of material on record, I am of the view that the impugned order deserves to be set aside. The plaintiff is held entitled for restoration of the suit.

Accordingly, this revision petition is allowed. Consequently, the impugned order dated 26.10.2016 is set aside. The suit is ordered to be restored to its original number. Trial Court is directed to proceed with the suit in accordance with law.

November 14, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No