

CR No.2646 of 2018

{1}

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

CR No.2646 of 2018

Date of decision:16.01.2019

Dhankaur

... Petitioner

Vs.

Ram Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. P.R. Yadav, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Short point involved in the present case is that against the judgment and decree dated 13.12.2013, respondent-defendant filed a civil appeal bearing No.93 of 2017 on 14.01.2014 which was pending. However, on 15.02.2018, he suffered a statement and order was passed without given opportunity of argue or oppose the aforementioned request.

The aforementioned factual aspect has not been controverted.

In view of above, I am of the view that petitioner-plaintiff should have been given a chance to put point across with regard to prayer for withdrawal of the suit and appeal with liberty to file the suit afresh. For the sake of brevity, statement dated 15.02.2018 of Krishan Kumar reads as under:-

“Stated that I am the GPA of the appellant Ram Kumar. The GPA is still operational and has not been cancelled. Ram

Kumar is still alive.

In the present case, some important facts and documents could not be got mentioned and produced in the instant suit, before the ld. Trial Court, which goes to the root of this case. Keeping in view the above circumstances I want to withdraw the present suit and appeal with liberty to institute a fresh suit, on the same cause of action, submitting therein the entire details, which have been submitted by me in the application for additional evidence and by producing the original sale deed bearing no.647 dated 24.08.1959. I reserve my right to produce any other material evidence, to sub-serve my case before the trial Court. Hence I may be allowed to withdraw my suit and the appeal in hand, with liberty as solicited by me in the above prayer.”

The impugned order is set aside. The appeal is restored to its original number. In case, such prayer is to be made by the plaintiff, the Court below shall issue notice to opposite party and decide the same in accordance with law.

The revision petition is allowed.

(AMIT RAWAL)
JUDGE

January 16, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No