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

**Civil Revision No.5788 of 2018 (O&M)
Date of Decision: 28.08.2019**

Jarnail Singh and another

.....Petitioners

Vs

Sukhdev Singh and others

....Respondents

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

Present: Mr. A.P. Kaushal, Advocate
for the petitioners.

Mr. R.S. Randhawa, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 21.05.2018 passed by the Civil Judge (Sr. Divn.) Sangrur vide which the application filed by the plaintiff/ respondent No.1 for withdrawal of the suit was disposed of and the application for transposing plaintiff No.1 as one of the defendants was allowed.

[2]. Plaintiffs No.1 to 4 filed a suit for declaration to the effect that they are the owners in joint possession to the extent of 20/384 share each (i.e. 5/384 share each) and defendants

No.1 to 3 are owners in joint possession to the extent of 5/384 share each (5/1152 share each) and proforma defendants No.11 to 13 are owners in joint possession to the extent of 5/384 share each (5/1152 share each) in the agricultural land measuring 185 *bighas* 1 *biswa kham* comprised in revenue estate of village Nagra as detailed in the headnote of the plaint. Further prayers were also made as shown in the headnote of the plaint.

[3]. Plaintiff No.1 appeared in the Court and made a statement that he does not wish to contest the suit and the suit may be dismissed as withdrawn on his behalf.

[4]. As per Order 23 Rule 1(5) CPC, the Court cannot permit one of the several plaintiffs to abandon the suit or part thereof without concurrence of other plaintiffs. The prayer qua withdrawal of the suit was not entertained. Plaintiffs No.2 to 4 did not give consent for withdrawal of the suit by plaintiff No.1. They contested the application on the ground that plaintiff No.1 is real brother of plaintiffs No.2 to 4 and uncle of defendants No.1 to 3 and he is in collusion with defendants and, therefore, he did not want to contest the suit. Earlier he filed a suit in respect of property sold by Tej Kaur and left the claim in respect of property of Kapoor Singh. The said fact was not disclosed to plaintiffs No.2 to 4. At the stage of evidence, the plaintiffs No.2

to 4 came to know about the said fact and they filed the application to withdraw earlier suit with liberty to file fresh by challenging the alleged Will executed by Kapoor Singh in favour of plaintiff No.1 and further defendants No.1 to 3. The application was allowed by the trial Court on 01.10.2014, therefore, present exercise was taken by plaintiff No.1 in order to help the defendants.

[5]. Plaintiff No.1 is the beneficiary of Will executed by Kapoor Singh and the application for withdrawal of the suit was filed only at the instance of defendants. In view of conflict in interests, such person can be transposed as one of the defendants in the suit in order to avoid multiplicity of litigation. In view of Order 23 Rule 1(5) CPC one of the several plaintiffs cannot withdraw the suit without the consent of other co-plaintiffs. Such an abandonment of claim would be illegal in the absence of consent of other co-plaintiffs.

[6]. Petitioners/defendants have opposed transposition of plaintiff No.1 as proforma defendant No.14. After finding that plaintiff No.1 is not interested in pursuing the litigation, the trial Court held that the plaintiff No.1 cannot be allowed to withdraw the suit and in case he is not transposed as one of the defendants, then it would affect the interests of other plaintiffs. The prayer for transposing plaintiff No.1 as one of the

defendants was allowed and the prayer for withdrawal of the suit at the instance of plaintiff No.1 was disposed of. In the event of such transposition of plaintiff No.1 as defendant No.14, the petitioners would not suffer any prejudice as their entitlement in the suit would not be reduced because defendants No.1 to 3 are the nephews of the plaintiffs. In any case they will inherit the due share of Sukhdev Singh brother of the petitioners.

[7]. Having considered the controversy in view of aforesaid facts, I find that the order passed by the trial Court is equitable and does not suffer with any jurisdictional error. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

August 28, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No