

CR-8238-2016 (O&M)

211

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

CR-8238-2016 (O&M)

Date of decision : 05.04.2019

Khem Chand

... Petitioner

Versus

Laj Pat Rai and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Deepak Jindal, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 31.08.2016, whereby the application for recalling of the statement dated 03.08.2016 for withdrawing the suit, has been dismissed.

Learned counsel for the petitioner submitted that the petitioner filed a civil suit for declaration claiming himself to be owner to the extent of 1/8th share, in the suit land left by his father. During the pendency of the suit, an application, Annexure P-1, accompanied by an affidavit dated 03.08.2016 was submitted for withdrawal of the statement. The trial Court, on 10.08.2016, recorded the statement and issued notice to the counsel for the defendants for filing the reply. On the next date of hearing i.e. 20.08.2016, the reply was not filed and the matter was adjourned to 31.08.2016, but before that, an application was moved for recalling of the

CR-8238-2016 (O&M)

statement/affidavit, which has erroneously been dismissed on the ground that the plaintiff-petitioner was insisting about the withdrawal of the suit.

Mr. Deepak Jindal, learned counsel for respondent No.1 submitted that a person, who has made the statement/affidavit, after understanding the contents of the same, cannot be permitted to volte-face.

I am afraid the argument of Mr. Jindal, is not sustainable as despite the submission of the application for withdrawal of the statement/affidavit, the suit was not withdrawn and the matter was pending for filing the reply. The trial Court should not adopt such harsh and strict approach in not accepting the request. Accordingly, the impugned order, under challenge, is totally atrocious and fallacious and the same is hereby set aside. The application seeking withdrawal of the statement/affidavit dated 03.08.2016 is allowed. The trial Court is directed to proceed with the suit, in accordance with law.

With the aforesaid observations, the present revision petition stands disposed of.

05.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**