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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8332-2016 (O&M)

Date of decision : 15.01.2019

Sukhdev Singh

... Petitioner

Versus

Inderjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Malkeet Singh, Advocate
for the petitioner.

None for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby an application submitted by respondent No.1/plaintiff, son of the petitioner, for withdrawal of the suit claiming following relief, has been allowed:-

"Suit for declaration to the effect that plaintiff and defendant No.2 are joint owners/co-parceners to the extent of land measuring 76 Kl 04 Mls being 2/3 share in the land measuring 104 Kl 07 Mls comprised in Kh. No.11, 14/2/1, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 of Rect. No.53, Kh. No.20 of Rect No.52, Kh. No.15, 16 of Rect No.54, Kh. No.21 of Rect. No.52 of Khewats No.222 and 223, Khatonis No.276, 277; 278, as entered in jamabandi for the year 2005-06, situated in the area of Village Bhagauram, Tehsil Nawanshahr, Distt. Shaheed Bhagat Singh Nagar and that the alleged transfer deed dated 25.9.2003, registered as Document No.2388 on 29.9.2003, claimed by defendant No.1 in his favour allegedly

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executed by deceased Sohan Singh, is ineffective, Inoperative, illegal, not affecting the rights of plaintiff and defendant No.2, in any way, concerning the suit land detailed above and as such, liable to be declared null and void.

With Consequential Relief,

Suit for permanent injunction restraining defendant No.1 from selling, alienating, transferring the suit land i.e. share of plaintiff and defendant No.2 and further from raising any construction and changing nature of the suit property, in any way, except in due course of law.

OR,

In the alternative, suit for joint possession of the suit land to the extent of share of plaintiff and defendant No.2 as fully detailed in the head-note of the plaint."

Learned counsel appearing on behalf of the petitioner submitted that as per the provisions of Order 23 Rule 1(3) of CPC, the plaintiff can only withdraw the suit, if it was suffering from formal/technical defect. The contents of the application shown to this Court, during the course of hearing, does not reveal any formal defect. A person cannot be permitted to withdraw the suit at his own will and choice.

Today there is no representation on behalf of respondent No.1.

This Court on 13.11.2018 passed the following order:-

"Respondent No.1 has been served.

Respondent No.2 is out of country.

Respondent No.1 is the contesting respondent, therefore, service of respondent No.2 is not necessary. Service of respondent No.2 is dispensed with for the present.

There is no representation for the petitioner.

Adjourned to 15.01.2019.

It is made clear that if the arguments are not addressed at the next date of hearing, interim order granted by this Court shall

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stand vacated."

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Malkeet Singh.

It would be apt to extract the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure and the contents of para 3 of the application, which read as under:-

"Provisions of Order 23 Rule 1(3) of CPC

(3) Where the Court is satisfied,—

- (a) that a suit must fail by reason of some formal defect, or*
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,*

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

Para 3 of the application

3. That the present suit has been filed by the plaintiff's attorney, Sukhjinder Singh and not through plaintiff himself. As plaintiff Inderjeet Singh was in Canada, so he could not instruct the attorney properly qua the facts and circumstances of the present case, in right perspective. As there were no clear & proper instructions, the plaintiff's attorney pleaded some facts incorrectly, causing formal defect in the suit and due to the said formal defect the suit would fail. On the change of Counsel, these formal defects were brought to the notice of the applicant and hence this application, Immediately without any delay."

On juxtaposition of the aforesaid provisions, the application is bereft of the reasons as to how the suit was suffering from formal or

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inherent defect, entailing cause to withdraw the suit with liberty to file fresh one. In the absence of the same, the application was not maintainable, but the trial Court remained oblivious of the aforementioned provisions, thus, there is grave illegality and perversity. Accordingly, the impugned order, under challenge, is set aside and the revision petition stands allowed.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**