

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

**CR No.9161 of 2017(O&M)
Date of Decision: 15.05.2019**

**Mohd. Jahuralam (since deceased) through his LR's and
othersPetitioners**

Versus

Malkiat Singh and othersRespondents

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

Present:Ms. Deepali Puri , Advocate
for the petitioners.

Mr. M.S. Sidhu, Advocate
for respondents No.1 to 7.

Mr. Mohd. Salim, Advocate
for respondent No.8.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 01.05.2017 passed by Additional District Judge, Ludhiana vide which application filed by the petitioners under Order 23 Rule 1 CPC was partly allowed to the extent of allowing the petitioners to withdraw the appeal without the relief of filing fresh suit on the same cause of action.

[2]. Some facts are relevant to be noticed. Petitioners filed a suit for permanent injunction, restraining the present

respondents/defendants No.1 to 8 from interfering in the peaceful use of the property and performance of Namaz as per Muslim religion in a Masjid as shown in the headnote of the plaint.

[3]. The suit was contested by the defendants/respondents.

[4]. Trial Court held that though the plaintiffs have mentioned their residences in village Bhora, but no evidence was brought to prove the same, nor any evidence was led to prove that Muslim community was performing Namaz in the Masjid. Report of the Local Commissioner was relied to say that Parkash of Shri Guru Granth Sahib Ji was present in the premises and the site plan prepared by the Local Commissioner did not tally with the site plan submitted by the plaintiffs. According to the notification, the property was a Wakf property, but the Wakf Board did not file any suit to get its possession.

[5]. On the basis of material on record, the trial Court held that Parkash of Shri Guru Granth Sahib Ji was existing besides Gurudwara Shri Guru Ravi Dass Sahib Ji. Plaintiffs failed to prove the identity of the property and the suit for permanent injunction was held not maintainable in its form. Accordingly, the suit was dismissed with costs vide judgment and decree dated 22.02.2013 passed by Additional Civil Judge (Senior Division), Ludhiana.

[6]. An appeal was preferred before the Lower Appellate Court. In the pending appeal, an application under Order 23 Rule 1 read with Section 151 CPC for permission to withdraw the suit as well as appeal with a liberty to file a fresh suit was filed. Petitioner contended that for seeking relief of declaration, Wakf Board has to be impleaded along with defendants and the suit can only be tried before the Wakf Tribunal. Such a suit is maintainable only after issuance of notice under Section 89 of the Wakf Act. With this background, the application was filed for withdrawal of the appeal as well as the suit with a permission to file fresh suit for declaration before the Wakf Tribunal.

[7]. Vide the impugned order, Lower Appellate Court has partly allowed the application only to the extent of allowing the appeal to be dismissed as withdrawn, whereas other relief regarding withdrawal of the suit for permanent injunction with a liberty to file fresh suit was declined. It was nowhere observed in the order as to whether suit was to be filed on the same cause of action or some different suit was to be filed for declaration before the Wakf Board after impleading Punjab Wakf Board as party defendant.

[8]. Respondents have not preferred any revision petition against the part acceptance of application under Order 23 Rule 1 CPC. In **Lal Singh Vs. Ajit Singh and another, 2008(3) RCR**

(Civil) 650, it has been held that once an order is passed permitting to withdraw the suit without granting any permission to file fresh on the same cause of action, such an order is illegal as permission to file fresh suit is in-built mechanism. The Court could have rejected the application in toto, but once the application is allowed whereby the suit/appeal is allowed to be withdrawn, permission to file fresh is a natural corollary/consequence of such permission. Permission to withdraw the suit/appeal would entail in grant of permission to file fresh suit/appeal on the same cause of action. Earlier suit was for permanent injunction and the same was dismissed on the ground of maintainability. Since Wakf Board was not party to the *lis*, therefore, suit can only be filed before the Wakf Board that too after impleading the Wakf Board as party defendant. Whether such a suit is barred or otherwise would be a question to be debated before the Wakf Tribunal in the event of filing such suit by the proposed plaintiffs/petitioners.

[9]. At this stage, no such observation can be made in respect of maintainability of such suit if at all the petitioners file the same, but the impugned order to the extent of rejecting the permission to file fresh suit/appeal is not legally sustainable as such permission is a natural consequence of granting permission for withdrawal of the suit/appeal.

[10]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 01.05.2017 passed by Additional District Judge, Ludhiana is hereby set aside. Plaintiffs are permitted to withdraw the suit as well as appeal with a liberty to file fresh on the same cause of action after impleading Wakf Board as party defendant. However, it is made clear that the issue of maintainability of fresh suit would be tested by the competent Court/Wakf Tribunal in accordance with law.

15.05.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No