

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

**CR No.878 of 2018(O&M)
Date of Decision: 04.12.2019**

Smt. Mamni Devi

.....Petitioner

Versus

Smt. Santosh @ Roshni and others

.....Respondents

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

Present:Mr. Sandeep Singh Ghangas, Advocate
for the petitioner.

Mr. S.S. Malik, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Challenge is to the order dated 09.01.2018 passed by Civil Judge (Junior Division), Panipat, vide which application under Order 23 Rule 1(3) CPC filed by the plaintiff/petitioner for withdrawal of the suit with a liberty to file fresh suit on the same cause of action was dismissed.

[2]. Perusal of the record would show that objection with regard to maintainability of the independent suit was taken in the written statement on 14.12.2015. No replication was filed to the written statement and the plaintiff persisted with the suit and

at the fag end of the trial, moved the application in question for withdrawal of the suit with a liberty to file fresh suit on the same cause of action.

[3]. The application was opposed by the defendant(s) on the ground that the judgment and decree dated 15.01.1981 was a compromise decree and the same was not a consenting decree. This fact was known to the plaintiff from the very inception and the same was also brought to the notice of the plaintiff in the written statement filed by the defendant(s), wherein it was specifically pointed out that the suit of the plaintiff is not maintainable under Order 23 Rule 3 CPC.

[4]. Plaintiff waited for the trial to proceed and reach at the stage of arguments. Now the trial is fixed for arguments for 14.02.2020. The withdrawal of the suit under Order 23 Rule 1(3) CPC would not be advisable as the same is not covered under Section 14 of the Limitation Act, which implies the trial in a Court having no jurisdiction. The maintainability of the suit has nothing to do with the jurisdiction of the Court. Plaintiff knowingly resorted to filing of independent suit, challenging the compromise decree, which was otherwise barred under Order 23 Rule 3 CPC. The arguments with regard to fraudulent decree to be challenged in independent suit, would be the subject matter of pending suit on merits. No such opinion can be given

at this stage, but having regard to precious time spent for the trial of the suit, the rejection of application, in my considered opinion is justified.

[5]. For the reasons recorded hereinabove, I find no justification to interfere in the impugned order which is not suffered with any illegality or perversity. This revision petition is accordingly dismissed.

04.12.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No