

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

123

CR No.732 of 2020

Date of decision : 03.02.2020.

Atma Ram (deceased) through his LRs and others

... Petitioners

Versus

Ramesh Chand and others

.. Respondents

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Robin Dutt, Advocate for the petitioners.

Anupinder Singh Grewal, J. (Oral)

The petitioners have challenged the order dated 01.10.2019 whereby the application preferred by the respondents to withdraw the suit with liberty to file a fresh one has been allowed.

Learned counsel for the petitioners contends that in the facts and circumstances of the case, it was mandatory for the respondents to seek permission of the Court under Section 92 of the Code of Civil Procedure (for short, 'CPC') before the suit could be instituted. He also contends that the respondents had filed the suit without seeking permission of the Court under Section 92 of the CPC, therefore, the suit was not maintainable and deserved to be dismissed at the very threshold. He has relied upon the judgment of the Supreme Court in the case of ***R.M. Narayana Chettiar and others versus N. Lakshmanan Chettiar and others***, reported as ***AIR (1991) SC 221***.

Heard.

The respondents had instituted a suit seeking removal of the petitioners/defendants from the management, control and possession as Mohatmim over the Thakurdwara Temple situated at village Dasora and for

appointment of new Mohatmim for the better management and control of the said temple. They had also sought a permanent scheme of management and appointment of trustees for rendition of true statement of account of income and expenditure of the Temple. It is mentioned in the impugned order that an application for permission to file the suit under Section 92 of the CPC read with Order 1 Rule 8 CPC had also been filed by the respondents alongwith the suit but the application could not be decided and specific order on the same was not passed by the Court inadvertently and thereafter, the respondents/plaintiffs had sought withdrawal of the suit with permission to file a fresh one after obtaining permission of the Court under Section 92 of the CPC.

The grant of permission to the respondents to institute a fresh suit after taking permission of the Court under Section 92 of the CPC appears to be in the interest of justice. The application had been preferred by the respondents to seek permission under Section 92 of the CPC but no order had been passed by the Court and therefore, the respondents/plaintiffs could not have been prejudiced on account of that.

The judgment of the Supreme Court in the case of ***R.M. Narayana Chettiar and others (supra)***, cited by learned counsel for the petitioner is distinguishable on the facts of the instant case. There is no denial of the proposition laid down therein that Section 92 of the CPC is a condition precedent for the institution of the suit and in case, such a suit is instituted without leave of the Court, it would not be maintainable. It was precisely for this reason that the trial Court by the impugned order had permitted the withdrawal of the suit with liberty to file a fresh one after obtaining permission

of the Court under Section 92 of the CPC. Even assuming as contended by learned counsel for the petitioner that the respondents had not filed any such application under Section 92 of the CPC earlier, the trial Court would be well within its rights to grant liberty to the respondents/plaintiffs to file a fresh suit after obtaining leave of the Court. The rules of procedure are meant to advance the cause of justice and not to thwart it. The petitioners are seeking dismissal of the suit in entirety without permission to file a fresh one on a technical objection which would not subserve the cause of justice.

Consequently, I do not find any manifest illegality in the order which would warrant interference while exercising revisional jurisdiction. The petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

February 03, 2020
sonia gugnani

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No