

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

CR-8562-2015 (O&M)
Date of decision : 28.01.2020

Manbhari and others ...Petitioners

Versus

Ram Pyari and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Pratibha Yadav, Advocate for the petitioners.

Mr. Sanjay Mittal, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-petitioners have filed the present revision petition against the order passed by the Civil Judge (Junior Division), Kosli dated 09.09.2015 allowing application filed under Order 23 Rule 1 of the Code of Civil Procedure permitting the plaintiffs to withdraw the suit with permission to file fresh one on same cause of action.

Plaintiffs, on noticing that khasra number of the suit property has been mentioned as 71 in place of khasra No.228 and relief of possession has not been sought by way of demolition of construction on encroached area, filed this application.

Learned trial Court, on appreciation of facts, granted the permission to the plaintiffs to withdraw the suit with permission to file fresh one.

Learned counsel for the petitioners contends that such error can always be corrected by moving an application for amendment of the plaint. Hence, she contended that the order is not in accordance with law.

On other hand, learned counsel for the respondents, submits that if

the plaintiff-respondent is permitted to amend the plaint, fresh issues will have to be framed and evidence would have to be led. Hence, he submits that no prejudice has been caused to the defendants-petitioners.

This Court has considered the submissions. Rule 1 of Order 23 of the Code of Civil Procedure enables the Court to grant permission to withdraw the suit with liberty to file fresh one on same cause of action, if the Court comes to a conclusion that the suit must fail by reason of some formal defect or there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. In the present case, two formal defects have been pointed out by the plaintiffs while moving an application for permission to withdraw the suit with liberty to file fresh one. The aforesaid reasons are sufficient to permit withdrawal of the suit.

Argument of the learned counsel for the petitioners that such defect can be cured by moving an application for amendment, is no doubt correct, however, in the facts and circumstances of the present case, this Court does not find that discretion exercised by the learned trial Court while allowing an application for permission to withdraw the suit with liberty to file fresh one on same cause of action after curing the defects, suffers from any error of law. Hence, there is no ground to interfere.

Accordingly, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No