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

CR No.2905 of 2021

Date of Decision: 23.11.2021

Gurcharan Singh

.....Petitioner

Vs

Charry @ Chandanpreet Kaur & Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amandeep Singh Jawandha, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Petitioner has assailed the order dated 18.08.2021 passed by Additional Civil Judge, Senior Division, Fatehgarh Sahib, whereby an application filed by the petitioner under Order 23 Rule 1-A CPC for transposing defendant No.2/ petitioner as plaintiff was dismissed.

Civil suit titled “**Charry @ Chandanpreet Kaur etc. Versus Naranjan Kaur etc.**” was dismissed as withdrawn by the trial Court on 01.11.2018. The said order was passed on the basis of statement suffered by the plaintiff on 29.10.2018 that she did not want to pursue the said suit any more. Petitioner

was impleaded as defendant No.2 and he filed his objections against the withdrawal of the suit and the same were rejected and the suit was allowed to be dismissed as withdrawn. Thereafter, the present application came to be filed by the petitioner seeking to be transposed as plaintiff in a decided suit. Provision in terms of Order 23 Rule 1-A CPC enables a defendant to be transposed as plaintiff, in case, she/he is having community of interest with the plaintiff and there is no conflict of interest. In the event of withdrawal of the suit by the original plaintiff, such defendant can be transposed as plaintiff so as to preserve the cause of litigation and in order to avoid multiplicity of suits. Court becomes functus officio only after pronouncing the order. In the present case, order of withdrawal has already been passed on 01.11.2018 and thereafter trial Court had no jurisdiction to reopen the case. Even otherwise, the proposed plaintiff/petitioner is having conflict of interest with the original plaintiff and the same cannot be entertained. The petitioner, if so advised, may avail his legal remedies in accordance with law.

The present petition is dismissed.

November 23, 2021
Manju

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No