

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1075 of 2011 (O&M)

Date of Decision: 26.05.2022

Rattan Bai and Another

... Petitioner(s)

Versus

Ram Dass and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Parmod Parmar, Advocate
for the petitioner(s).

Mr. Samir Rathaur, Advocate
for the respondent No.2.

Mr. Manoj Kaushik, Advocate
for the applicant (In CM-829-CII-2016).

Anil Kshetarpal, J.

1. Defendant No. 1 and 3 have preferred the present revision petition under Article 227 of the Constitution of India with a prayer to set aside the order dated 01.02.2011, passed by the Civil Judge (Senior Division), Jhajjar, while allowing the plaintiff No.1 and 3 to withdraw their application dated 18.12.2007 and statement dated 04.08.2010.

2. At the outset, it must be noticed that in the first round, the revision petition was dismissed on 08.03.2011. However, the Supreme Court has set aside the aforesaid order while remitting back the matter to the High Court for deciding it afresh.

3. Some particular facts are required to be noticed. The plaintiffs filed a suit for possession by way of specific performance of the agreement

to sell. During the pendency of the suit, an application was filed by the plaintiff No.1 and 3 seeking permission to withdraw the suit as there was settlement between the parties at that time. The statement of the learned counsel, in the presence of Ram Dass son of Chhote Lal, was recorded on 04.08.2010. Subsequently, the plaintiff No.1 and 3 filed an application on 16.09.2010 for permitting them to withdraw their application dated 18.12.2007 as well as the statement dated 04.08.2010. The trial Court permitted the plaintiff No.1 and 3 to withdraw their application as well as their statement.

4. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book and the record, which was requisitioned.

5. The learned counsel representing the petitioners contends that the trial Court erred in permitting the plaintiffs to withdraw their application particularly when they have filed an application on 18.12.2007 and their counsel. in the presence of the plaintiff No.1-Ram Dass, suffered a statement to that effect. Per contra, the learned counsel representing the respondent No.2 contends that he had engaged Mr. Arun Kumar Saini, Advocate, in the year 2007 who got signed these documents i.e. the application and the affidavit. However, subsequently, he was instructed not to file the same in the Court. He further contends that subsequently, the aforesaid documents have been misused by fabrication. He draws the attention of the Court to the over-writings/cuttings in the application.

6. In my considered view, the course adopted by the trial Court is not correct. If there is a serious dispute between the parties about the

correctness of the application filed, the Court should have framed an issue and should have permitted the parties to lead evidence. No doubt, plaintiff No.1 and 3 have raised an issue that can be tried. In such circumstances, the trial Court is ordered to frame an issue on the said ground and permit the parties to lead sufficient evidence.

7. Keeping in view the aforesaid facts, the present revision petition is allowed and the order dated 01.02.2011 is set aside. The trial Court is directed to decide the matter afresh. The parties through their learned counsel are directed to appear before the trial Court on 05.07.2022.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 26, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No