

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

CR-4865-2013 (O&M)

Date of Decision : 22.12.2022

Pargat Singh

....Petitioner

VERSUS

Bakhshish Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Sirphikhi, Advocate for the petitioner.

Mr. A.S. Manaise, Advocate for the respondents.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 26.07.2013 whereby the application filed by the plaintiff-petitioner for withdrawal of the suit with liberty to file afresh with better particulars has been dismissed.

Brief facts relevant to the present *lis* are that a suit for declaration was filed by five plaintiffs to the effect that plaintiff No.1, namely, Smt. Bhiri, was the owner in possession of 07 kanals 17 marlas while plaintiff Nos.2 to 5 namely, Pargat Singh, Balwinder Singh, Rajwant Singh and Sarabjit Kaur, were owners in possession of land measuring 5 kanals and 13 marlas and further that the General Power of Attorney dated 28.11.2002 alleged to have been executed by plaintiff No.1, Smt. Bhiri, in favour of defendant No.1 was forged and fabricated and consequently the alleged sale deed dated 16.12.2002 executed by Bakhshish Singh

(defendant-respondent No.1 herein) in favour of Kulwant Kaur (defendant-respondent No.2) was illegal, null and void.

Written statement was filed by the defendants. During the pendency of the suit, on 05.04.2004, plaintiff No.1, Smt. Bhiri, got her statement recorded that she had infact given the General Power of Attorney in favour of Jagir Singh. Thereafter, on 31.07.2010 plaintiff No.1, Smt. Bhiri, suffered a statement before the Lok Adalat withdrawing her suit on the ground that the matter stood compromised with the defendants. The defendant-respondents during their evidence produced GPA dated 28.11.2002 as Ex.D-1. In rebuttal, on 27.08.2002, an application for examination of an expert was filed and thumb impression of Smt. Bhiri on the original GPA Ex.D-1 with the thumb impression of Smt. Bhiri on the statement dated 05.04.2004, recorded in Court, was sought to be compared. The application was dismissed by the Trial Court vide order dated 07.12.2012. Aggrieved by the said order, a revision petition was preferred being CR-314-2013 which was disposed of by observing as under :

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If any one of the plaintiffs has been party to an order which is prejudicial to the other plaintiffs who was not a party to the criminal proceedings, the other plaintiff shall be bound unless the other plaintiff is transposed as an adversary in suit. The plaintiffs cannot speak in two different languages, as it were, for, the conduct of one plaintiff will cause an embarrassment in the trial.

It shall be open to the other party to secure a right to

demand that the document produced from the criminal Court is taken on file only after due proof thereof.

xxx”

The plaintiff-petitioner thereafter filed an application under Order 6 Rule 17 and Order 1 Rule 10 CPC seeking transposition of plaintiff No.1, Smt. Bhira, as defendant by stating that Smt. Bhira had colluded with the defendants. The application under Order 6 Rule 17 read with Order 1 Rule 10 CPC was dismissed by the Trial Court vide order dated 31.05.2013. The plaintiff-petitioner thereafter moved the present application on 08.07.2013 for withdrawal of the suit to file afresh on the same cause of action. The said application was dismissed by the impugned order dated 26.07.2013.

Learned counsel for the plaintiff-petitioner would contend that without transposing Smt. Bhira as a defendant the suit of the plaintiff-petitioner would fail and hence the necessity to withdraw the suit with liberty to file afresh on the same cause of action was sought. It is further the contention that as per the provisions of Order 23 Rule 1 Sub-rule (5) CPC no Court can permit one of the several plaintiffs to abandon a suit or a claim without the consent of the other plaintiffs. However, in the present case the plaintiff No.1, Smt. Bhira, was permitted to withdraw the suit without the consent of the remaining plaintiffs.

Per contra, learned counsel for the respondents has stated that the application for permission to withdraw the suit with liberty to file afresh has rightly been rejected since the case was at the stage of rebuttal and arguments.

Heard.

Order 23 Rule 1 CPC reads as under:-

“1. Withdrawal of suit or abandonment of part of claim.

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it

thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

A bare perusal of Order 23 Rule 1 CPC clearly reveals that at any time after the institution of a suit the plaintiff may abandon his suit or abandon part of his claim. Sub-rule (3) states that where the Court is satisfied that the suit must fail for reason of some formal defect and that there are sufficient grounds for allowing the institution of a fresh suit on the same subject matter, it may grant permission to withdraw such suit.

In the present case one of the plaintiffs in contravention of the provisions of Order 23 Rule 1 Sub-rule 5 CPC was permitted to withdraw

the suit without the permission of the other co-plaintiffs. The remaining co-plaintiffs, thereafter, filed an application for amendment wanting to transpose the original plaintiff No.1, Smt. Bhira, as a defendant and to take the plea that Smt. Bhira had colluded with the defendants. The said application was dismissed. The remaining plaintiffs cannot take a plea of collusion against Smt. Bhira till she is transposed as a defendant, the application for which was dismissed. The present suit is likely to fail on this account alone, therefore, the necessity to file the application for withdrawal of the suit with liberty to file afresh on the same cause of action.

In view of the above, the impugned order dated 26.07.2013 passed by the Trial Court cannot be sustained. The present revision petition is accordingly allowed. The plaintiff-petitioner is permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action. Pending applications, if any, also stand disposed off.

December 22, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO