

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1946 of 2019 (O&M)
Date of decision: 23.09.2022

Raj Kumar

..Petitioner

Versus

Smt. Sushma Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Vij, Advocate, for the petitioner.
Mr. R.S.Hooda, Advocate, for the respondent.

ANIL KSHETARPAL, J(Oral)

The petitioner before this Court was defendant no.2 in a suit for restoration of possession filed by the plaintiff (respondent herein).

After a prolonged trial of 6 years, the trial Court on 15.12.2018, permitted the plaintiff to withdraw the suit with permission to file a fresh one. Questioning its correctness, defendant no.2 has filed the present revision petition.

Some facts are required to be noticed.

The plaintiff initially filed the suit on 17.12.2010 for grant of decree of permanent injunction with a consequential relief of mandatory injunction, claiming to be owner in possession of ½ share of the plot. She prayed for a decree of injunction restraining the defendants from creating any charge or mortgage upon the property. After a prolonged trial, the suit was dismissed on 31.03.2016. The plaintiff, during the pendency of the first suit, filed a separate suit under Section 6 of the Specific Relief Act, 1963, in the year 2012, claiming that she has been illegally dispossessed. The application for review of the judgment dated 31.03.2016 passed in the first suit was also dismissed.

During the pendency of the subsequent suit filed under Section 6 of the Specific Relief Act, 1963, the plaintiff filed an application under Order VI Rule 17 CPC for permission to amend the plaint in order to seek the relief of declaration that the alleged sale deed executed in favour of the defendants on 09.06.2010 is null and void. Before the application under Order VI Rule 17 CPC could be decided, on the request of the plaintiff the suit was permitted to be withdrawn with liberty to file a fresh one. The order passed on 15.12.2018 is extracted as under:-

“Today the case was fixed for arguments on the application under Order 6 Rule 17 read with Section 151 CPC. At this stage, learned counsel for plaintiff suffered a statement wherein stated that the present suit has been filed under Section 6 of the Specific Relief Act, due to some technical defects the suit of declaration could not be amend. Therefore, the plaintiff wants to withdraw the present suit with permission to file fresh suit. Heard and allowed. Keeping in view the contents of the suit and on perusal of the case file the suit is dismissed as withdrawn with liberty to file fresh suit.

Order dismissed as withdrawn.”

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

Order XXIII Rule 1 CPC enables the plaintiff to apply for permission to withdraw the suit with liberty to institute a fresh suit with respect to the same subject matter of such suit or on the same cause of action. However, before the Court grants such permission, it has to satisfy itself that the suit must fail by the reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit upon the subject matter of the suit. It is evident that the trial court has not recorded any satisfaction as required under Order XXIII Rule 1(3) CPC.

This Court gave opportunity to the learned counsel representing

the respondent (plaintiff) to explain the formal defect in the suit. However, despite best efforts, he failed to draw the attention of the court to any such formal defect. He submits that a subsequent suit has already been filed.

Be that as it may. Once the order passed by the trial Court on 15.12.2018, suffers from material error, mere filing of the subsequent suit by the plaintiff would not debar the court from interfering, particularly when, in the first suit, filed by the plaintiff, the decree dated 31.03.2016 has already been passed.

Keeping in view the aforesaid facts, the order under challenge is set aside. The suit filed under Section 6 of the Specific Relief Act, 1963, is restored to its original number.

The civil revision petition is allowed.

The parties through their counsels are directed to appear before the trial Court on 20.10.2022.

All the pending miscellaneous applications, if any, are also disposed of.

September 23, 2022

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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>