

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

CR-2847-2019 (O&M)

Date of decision: 03.08.2022

Jagtar Singh

....Petitioner

Versus

Kaur Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. T.K.Joshi, Advocate for the petitioner
Mr. S.K.Singla, Advocate for respondent no. 1 to 7

ANIL KSHETARPAL, J (Oral)

After a period of 6 years of its institution, the learned trial court has permitted the plaintiffs to withdraw the suit filed by them with permission to file fresh suit. The correctness of the aforesaid order has been assailed in this revision petition.

The plaintiffs filed a suit for grant of decree of permanent injunction on the basis of an agreement to sell/writing executed by predecessor-in-interest of the defendants on 10.06.1988/18.12.1988. It is the case of the plaintiffs that they have purchased the property measuring 9 bighas after paying the entire sale consideration.

The prayer made in the suit is extracted as under:-

“It is therefore, prayed that the suit of the plaintiff may kindly be decree by passing a decree for permanent injunction restraining the defendant, their agents, servants representatives claiming through or under them from interfering in the cultivating possession of the plaintiffs in any manner over the suit land fully described in the head note situated in the revenue estate of Village Langori, Tehsil and District Patiala, or alienating or encumbering the suit land described as " Rarrian Land ", the plaintiff No. 1 and predecessor in interest of plaintiffs No.2 to 7 i.e Joginder Singh and Gurjant

Singh since deceased having purchased the same vide writing dated 10-06-1988 / 18-12-1988 and the plaintiff being entitled to retain the possession of the same. Having entered the same after paying the entire sale consideration and thus being entitled to the protection under Section 53 of Transfer of Property Act Or in the alternative decree for declaration for considering the writing dates 10-06-1988 / 18-12-1988 as a disposition intended to take effect subsequent to the death of the Harnek Singh son of Mangal Singh and thereby entitling the plaintiffs to succeed to the suit property described supra in their own name. The writing dated 10-06-1988 / 18-12-1988 is appended herewith as Annexure - A.

Any other additional or alternative relief, which the Hon'ble Court deems fit may also be granted in favour of the plaintiff and against the defendants.”

When the plaintiffs had concluded their evidence, they filed an application for permission to amend the suit to a suit for specific performance of the agreement to sell which was dismissed. Thereafter, the plaintiffs filed the application for permission to withdraw the suit with permission to file fresh one, which has been allowed.

Heard learned counsel representing the parties at length and with their assistance perused the paperbook. Sub-rule 3 of Order 23 Rule 1 of the Code of Civil Procedure, 1908, enables the court to grant the plaintiff permission to withdraw the suit, if any one of the conditions, specified in Rule 1 sub-rule 3 is fulfilled. No doubt, the suit, as already filed, does not suffer from any formal defect. However, clause (b) to sub-rule 3 permits the court to grant permission to the plaintiffs to file a fresh suit on same cause of action, if there are sufficient grounds to allow the plaintiffs to institute fresh suit for the same subject matter.

Now, if the permission to file a fresh suit is not granted, the

plaintiff is likely to suffer great prejudice. On the other hand, the defendant can defend the second suit while objecting to its maintainability on all possible grounds. Order XXIII Rule 1(3) is two parts. As per sub rule 3(a) of Rule XIII the permission to withdraw the suit can be granted if the court is satisfied that a suit must fail by reason of some formal defect whereas as per sub rule 3 (b) the court can grant permission if it is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit.

In the present case, the application filed by the plaintiffs to have permission to amend the suit has already been dismissed. The aforesaid order has not been challenged.

Keeping in view the aforesaid facts, though for different reasons, this Court does not find it appropriate to interfere, particularly, when the plaintiffs have already filed a suit for specific performance.

Hence, dismissed.

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

03.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE