

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2660 of 2021 (O&M)

Date of Decision: 06.04.2022

Gurdish Singh

... Petitioner(s)

Versus

Sukhdeep Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner(s).

Mr. Sandeep Sharma, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. On 09.11.2021, the following order was passed by this Court:-

“The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Learned counsel representing the petitioner inter alia contends that the respondent (the plaintiff in the trial Court) had been permitted to withdraw the suit with liberty to file a fresh suit on the basis of Will dated 05.03.1991. He contends that this order has been passed without an application under Order 23 Rule 1 CPC as well as the Court has failed to record a finding as to the technical defect in the previous plaint. He further contends that in fact fresh suit has been permitted to be filed so as to enable the plaintiff to indulge in forum shopping.

Notice of motion to respondent No.1 only for 30.11.2021.

The petitioner shall be at liberty to serve respondent No.1 through his counsel in the subsequent suit”.

The respondent No.1 herein is a plaintiff in a suit for grant of

decree of declaration to the effect that the Will dated 05.03.1991, produced by Gurdish Singh son of Sh.Rattan Singh is illegal, wrong and fabricated. The suit was filed in the month of March, 2021. Without any application, the Court permitted him to withdraw the suit with liberty to file a fresh one on the basis of the Will dated 05.03.1991. It is evident from the reading of the order dated 04.10.2021 that the Court has not recorded any reason while permitting the plaintiff to withdraw the suit. A suit, after its institution, can be permitted to be withdrawn in accordance with the Order XXIII Rule 1 CPC. However, if the plaintiff wants to withdraw the suit with liberty to file a fresh one on the same cause of action, he is required to establish that the suit suffers from a formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter.

3. It is evident that the Court, while passing the impugned order, did not examine the proviso of Order XXIII Rule 1 CPC.

4. Keeping in view the aforesaid facts, the present revision petition is allowed and the order, under challenge, is set aside. The parties, through their respective learned counsel, are directed to appear before the trial Court on 21.04.2022.

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

(Anil Kshetarpal)
Judge

April 06, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No