

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6816 of 2019 (O&M)

Date of Decision: 13.05.2022

Satpal Singh

... Petitioner(s)

Versus

Paramjit Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. A.P.Kaushal, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The plaintiff assails the correctness of the orders dated 22.02.2018 and 11.07.2019. He filed a previous suit claiming ownership on the basis of a sale deed executed by the defendant No.2 through his general power of attorney (defendant No.1). During the pendency of the suit, he suffered the following statement:

“Statement that I do not want to run the present case due to technical error. Be allowed to file a fresh case. And be dismissed”.

2. The trial Court permitted the plaintiff to withdraw the suit, but neither granted permission to file a fresh one nor rejected it. The order dated 22.02.2018, passed by the trial Court, reads as under:-

“Plaintiff represented by his counsel made a statement to withdraw present suit on account of some formal/technical defect. Consequently, the present suit is hereby dismissed as withdrawn. File be consigned to record room”.

Thereafter, the plaintiff filed a fresh suit which has been

ordered to be rejected under Order VII Rule 11 CPC on the ground that the plaintiff's previous suit has been dismissed as withdrawn without any permission to file a fresh one. The correctness of both the orders has been challenged.

4. It is well settled that after an application is filed for permission to withdraw the suit with liberty to file a fresh one, the trial Court is either required to allow the same in entirety or reject the same. The Court cannot allow one part while remaining silent on the second part. It is evident that the plaintiff sought permission to file a fresh suit. But the trial Court has neither allowed it nor rejected the same.

5. The suit of the plaintiff is based on a document of ownership. He has already filed a subsequent suit.

6. In view of the aforesaid facts, the order dated 22.02.2018 is modified. The plaintiff is permitted to withdraw the Civil Suit No. 758 of 2014 with permission to file a fresh one.

7. Keeping in view the aforesaid facts, the subsequent suit is restored to its original number. Let the trial Court pass a fresh order on an application under Order VII Rule 11 CPC.

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

(Anil Kshetarpal)
Judge

May 13, 2022
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No