

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 1136 of 2017 (O&M)****Date of Decision: 19.10.2023**

Umesh Gupta

... Petitioner(s)

Versus

Jagir Singh (Now Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Kunal Mulwani, Advocate
for the petitioner(s).Mr. Sanjay Verma, Advocate
for the respondent No.1.**Anil Kshetarpal, J.**

1. A challenge in this revision petition is to the order passed by the First Appellate Court while allowing the respondent's (plaintiff's) application under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to permit him to withdraw the suit with permission to file a fresh one on the same cause of action.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The respondent-Jagir Singh (plaintiff before the trial Court) has entered into an agreement to sell on 01.02.2005 with M/s Veer Bhoomi Plantation (India) Limited. As per the agreement to sell, the sale deed was to be executed and registered on 31.03.2007. The sale deed was not executed. Subsequently, M/s Veer Bhoomi Plantation (India) Limited sold the property in favour of various

other persons. On 13.04.2007, Jagir Singh has filed a suit for the grant of permanent injunction restraining M/s Veer Bhoomi Plantation (India) Limited from selling the property. In that suit, an application filed for the grant of temporary injunction was dismissed, which, in appeal, was also affirmed. Thereafter, Jagir Singh filed an application for permission to amend the plaint in order to convert the nature of the suit from permanent injunction to the suit for specific performance of the agreement to sell. The aforesaid application was dismissed vide order dated 14.01.2014, which, in revision petition, was upheld by the High Court on 06.07.2015. Jagir Singh filed a Special Leave Petition before the Supreme Court which was also dismissed on 20.01.2016. Ultimately, the suit filed by the plaintiff was dismissed as not maintainable in view of the bar contained in Section 41(h) of the Specific Relief Act, 1963. The plaintiff-Jagir Singh has filed an appeal before the First Appellate Court. Thereafter, he filed an application under Order XXIII rule 1(3) CPC to withdraw the suit with permission to file a fresh one on the same cause of action. The aforesaid application has been allowed by the First Appellate court. The correctness of the aforesaid order has been challenged before this court.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioner, while referring to the provisions of Order XXIII Rule 1(3) CPC, submits that the Court can permit withdrawal of the suit with permission to file a fresh one only on two conditions, namely (i) if a suit must fail by reason of some formal defect and (ii) if there are sufficient grounds for allowing the plaintiff to institute a fresh

suit for the subject matter of suit or part of a claim.

5. The learned counsel submits that the First Appellate Court has overlooked the fact that the plaintiff has never filed a suit for specific performance of the agreement to sell for all these years. The learned counsel further submits that as per Article 54 of the Schedule attached to the Limitation Act, 1963, the limitation period for filing a suit for specific performance of the agreement to sell came to an end on 31.03.2010, whereas, the application for permission to withdraw the suit was filed for the first time in the First Appellate Court on 29.07.2016. The learned counsel further submits that the First Appellate Court has overlooked this provision while permitting the plaintiff to file a fresh suit. He further submits that there is a decree passed against the plaintiff which cannot be nullified only on an application filed by the plaintiff to withdraw the suit.

6. On the other hand, the learned counsel representing the respondent No.1 submits that the suit was dismissed on the ground that it is not maintainable, therefore, the trial Court has correctly permitted the plaintiff to withdraw the suit with the liberty to file a fresh one.

7. This Court has considered the submissions made by the learned counsel representing the parties. It is evident that the suit filed for injunction was not suffering from any formal defect. In fact, it was suffering from an inherent defect with regard to the maintainability of the suit. Moreover, the aspect of limitation period has not been considered by the First Appellate Court. The suit for specific performance could only be filed within a period of three years from 31.03.2007. Thus, the First Appellate Court has clearly erred in allowing the plaintiff to withdraw the suit during the pendency of

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the suit.

8. Keeping in view the aforesaid discussion, the present revision petition is allowed. The impugned order dated 07.10.2016 is set aside. The first appeal filed by the plaintiff shall stand restored to its original number. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 20.11.2023.

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

(Anil Kshetarpal)
Judge

October 19, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No