

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

CR-6822-2018(O&M)

Reserved on:-18.5.2023

Date of Pronouncement:-25.5.2023

Jaipal

...Petitioner

Versus

Pavan Sher Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P. Jain, Advocate
for the petitioner.

Mr.Abhinav Goel, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 16.7.2018 passed by Additional Civil Judge (Sr.Divn.), Sohna, Gurugram vide which an application filed by the plaintiff for permission to withdraw the suit, had been allowed granting him liberty to file a fresh suit. This revision petition has been brought by defendant Jaipal.

2. Briefly stated, facts of the case are that plaintiff Pavan Sher Singh had filed a suit for declaration with consequential relief of permanent injunction against defendant Jaipal, his wife – Suresh and one Brijbhan.

3. As per version put forward by the plaintiff vide sale deed

dated 12.10.1995, the plaintiff and defendant Jaipal became co-owners to the extent of $\frac{1}{2}$ share each in respect of land measuring 3 kanals 15 marlas situated at Sohna; that land was on lease for the period from 27.12.1989 to 26.10.2088 and such lease rights had been sold to the plaintiff and defendant No.1; defendant No.3 vide lease deed Annexure B had relinquished his rights for the remaining period and transferred those rights in favour of defendant No.2, in the suit land to the exclusion of the plaintiff when plaintiff had 50% such rights therein. The relief sought by the plaintiff was as under:

- (i) that the plaintiff is entitled to be incorporated as a co-pattedar with defendant No.2 for the land in dispute; by way of correction in the mutation Annexure C;
- (ii) that defendants No.1 and 2 have no right to transfer the pattedari rights of defendant No.2 to any third party till the land in suit is divided by metes and bounds and correction in the relevant mutation is made; and
- (iii) a decree for permanent injunction restraining defendants Nos.1 and 2 from further transferring the land measuring 3 kanals

4. The suit was contested by the defendant No.1 by way of filing written statement, to which replication had been filed by the plaintiff.

5. Thereafter, the plaintiff moved an application for amendment of the plaint contending that earlier there was a relationship of trust between the plaintiff and defendant No.1, as a result thereof the plaintiff completely relied upon defendant No.1 in matters relating to purchase of

lands; defendant No.1 had appeared on behalf of plaintiff as well, at the time of execution of registration of sale deed on 12.10.1995; as a matter of fact defendant No.1 had got executed a deed for conveyance of lease hold rights of the land in question in favour of the his own wife i.e. defendant No.2 on the same date, on which the sale deed was executed, thus on the face of it such conveyance deed hold rights is fraudulent and collusive, therefore the lease deed dated 12.10.1995 is sham, bogus, fraudulent, collusive document and plaintiff be permitted to amend the plaint so as to incorporate those facts and seek a decree for declaring the lease deed as illegal, null and void.

6. That application was opposed by the defendants. It was dismissed by the trial Court vide a detailed order dated 20.1.2015. The order was challenged before the High Court by way of filing a revision petition but said revision petition was also dismissed on 13.3.2018.

Thereafter, the plaintiff filed an application for permission to withdraw the suit with liberty to file a fresh one on the same cause of action. It was opposed by the defendants. Vide the impugned order, the application was accepted, leaving the defendant No.1 aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents. Though only respondent No.1 has put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

8. The trial Court referring to various judgments has observed

that not claiming a proper relief is a formal defect and in this case the application for amendment filed by plaintiff challenging the lease deed in favour of defendant No.2 had been declined by the trial Court with revision petition against that order having been dismissed by the High Court. Therefore, the suit was bound to fail and plaintiff was entitled to withdraw the suit, therefore necessary permission was granted.

9. The case of the plaintiff falls within four corners of Order 23(3) CPC, which provides that where the Court is satisfied that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

10. The trial Court has recorded its subjective satisfaction in that regard in the impugned order.

11. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

12. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 8.10.2018 passed by this Court, thus

comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

25.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No