

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7589-2015 (O&M)
Date of decision: 10.05.2023

AMOLAK SINGH & ANR

...Petitioners

VS

HARBHAJAN SINGH & ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S.Kanwal, Advocate,
For the petitioners.

Mr. K.S.Lakhanpal, Advocate,
For respondents No.1, 2 and 3.

Mr. Sunil Agnihotri, Advocate
For respondent No.4.

Mr. K.S.Dadwal, Advocate,
For respondents No.5 to 7.

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 07.08.2015 (Annexure P-4) passed by learned Civil Judge (Junior Division), Dasuya, District Hoshiarpur whereby permission to withdraw the suit with liberty, was declined.

2. Learned counsel for the petitioners submits that plaintiff/petitioners filed a civil suit for declaration to the effect that they are owners in possession of land in dispute along with permanent injunctions restraining defendants from alienating the suit property. He further submits that there was a defect in drafting the suit due to which petitioners wanted to withdraw the suit with liberty to file afresh with better particulars. Therefore,

they moved an application under Order 23 Rule 1 CPC for withdrawal of the suit with liberty but the same was dismissed vide impugned order dated 07.08.2015.

3. Per contra, learned counsel for respondent No.4 strenuously opposes the revision petition and supports the impugned order dismissing the application of petitioners being based on correct findings.

4. I have heard learned counsel for the parties and gone through the case file.

5. It transpires that revision petition is filed against the order declining the application of the petitioners herein to seek withdrawal of the suit with liberty to file fresh suit, on the same cause of action, after issuance of proper legal notice to defendant No.10, who is holding a public office as has been contended by learned counsel for petitioners.

6. Matter has been pending in this Court though having been taken on multiple occasions since 2015. Learned counsel for respondent No.4 has drawn my attention to para 5 of the revision petition which is as below:

"5. That suit is at initial stage and no prejudice is going to be caused to defendants. There is technical defects in the suit that defendants no. 1 to 4 had sold out their share in the joint land along with share of plaintiffs/petitioner by forging their signatures in their absence, without my knowledge, vide sale deed 16.07.1985. But, in the Civil suit in head note as well in pleadings it has been written as that "Sale deed 16.07.1985 executed by defendants No1 to 3 in favour of defendants No. 4 to 6 in connivance with defendants No. 7 & 8 and revenue officials to share of plaintiffs are illegal, null and void and is liable to be cancelled and mutation sanctioned on the basis of alleged sale dated 16.07.1985 is liable to be set aside....." Due to this whole meaning of suit qua share of plaintiffs/petitioners has been changed and there arises ambiguity. Secondly, defendant No.10 which is public office was not necessary party but inadvertently he was incorporated as party to suit. Thirdly, sale deed was defective qua the plaintiffs only but it has been challenged qua all the shareholders. Fourthly head note of the suit filed was defective showing incomplete sense of relief

prayed for. Therefore, it was significant for plaintiffs to withdraw the present suit and file a fresh suit with better particulars and for their specific share only.”

6. *Apropos*, he would argue that it is not suit simplicitor which is sought to be re-filed. The petitioners are in fact intending to change the nature of entire pleadings, which is not permissible.

7. Be that as it may, even if it is assumed that certain additional and/or new case is to be pleaded by plaintiffs, the earlier suit was at a very nascent stage, wherein written statement was yet to be filed, and that apart, trite law it is that the plaintiff has to stand on his own legs and onus to prove the pleadings in the plaint would be obviously on the plaintiff.

8. In totality of the circumstances, no prejudice would be caused to respondents in case, petitioners/plaintiffs are allowed to take corrective steps in their pleadings by filing the suit afresh, as was prayed by them before learned trial Court.

9. In the premise, impugned order is set aside. Application of petitioners is allowed. Petitioners are permitted to file suit afresh, on the same cause of action, with better particulars.

10. Disposed of, accordingly.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

10.05.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No