

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2626 of 2023****Date of Decision: 24.11.2023**

Satyavrat

... Petitioner(s)

Versus

Virender Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Sudhanshu Makkar, Advocate
for the petitioner(s).Mr. R.K.Girdhwal, Advocate
for the respondent No.1.**Anil Kshetarpal, J.**

1. Respondent No.1 Virender Singh filed a suit on 07.04.2012, for the grant of decree of declaration with a consequential relief of permanent injunction.
2. In para 3 of the plaint, respondent No.1 (plaintiff before the trial Court) asserts that Rishal Singh was unmarried and issueless, therefore, he adopted the plaintiff (Virender Singh) on 03.03.1988, as per their local customs. In para 4 of the plaint, it was pleaded that after the adoption ceremony was performed on 03.03.1988, the plaintiff started treating Rishal Singh as his father. Thereafter, on 22.07.1996, the adoption deed was executed before the Sub Registrar. The prayer clause of the plaint reads as under:-

*“It is, therefore, respectfully prayed that a decree of
declaration may kindly be passed in favour of the plaintiff, by*

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declaring:- (1) Declaring the Adoption deed registered on 22.7.1996 to be valid, legal and binding upon the defendants (ii) Declaring the Plaintiff as adopted son of Rishal Singh s/o Kishana by virtue of Adoption deed registered at serial no.11 dated 22.07.1996 before Sub-registrar Badhada, and declaring the Adoption-Deed to be valid, legal and binding upon the defendants; (iii) for declaring the mutation no.815 to be valid, effective and binding upon the defendants; (iv) for declaring the plaintiff to be the legal heir/successor and owner in possession of the respective (1/4th) share by inheritance, which was originally inherited by Rishal Singh S/o Kishna and further a decree of permanent injunction may kindly be passed in favour of the plaintiff restraining the defendants from alienating or taking advantage of the revenue records which have been entered/reflecting as per natural succession.”

3. Both the parties have led their evidence. In the year 2018, the plaintiff filed an application for permission to withdraw the suit with the liberty to file a fresh one. It was asserted in the application that due to some technical defects, the plaintiff does not want to proceed with the suit. However, the aforesaid technical defects were not specified in the application.

4. In the first round, the application was allowed. However, in the revision petition, the aforesaid order was set aside with the direction to the trial Court to pass a fresh order in terms of the Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). In the

second round, the Court has allowed the application with the following observations:-

“11. From the pleadings of the plaint, it is transpired that the actual grievance of the plaintiff is to get declared his adoption dated 03.03.1988 as valid and the declaration of adoption deed dated 22.07.1996, which corroborates the alleged adoption dated 03.03.1988, is just an ancillary relief. The pleadings of the plaintiff shows that plaintiff is establishing his locus-standi to file the present suit on the basis of his alleged adoption effected on 03.03.1988, however, in the prayer clause, he has sought relief by virtue of adoption deed dated 22.07.1996. Nowhere the plaintiff has prayed to get his real grievance addressed, i.e. to get declared his adoption (dated 03.03.1988) legal.”

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

6. The learned counsel representing the petitioner contends that the plaintiff (respondent No.1 herein) has already pleaded that the adoption ceremony took place on 03.03.1988. Subsequently, a registered adoption deed was executed on 22.07.1996. The learned counsel submits that the suit does not suffer from any formal defect.

7. On the other hand, the learned counsel representing the respondent No.1 (plaintiff) submits that the suit suffers from a formal defect as the declaration with regard to the genuineness of adoption that took place on 03.03.1988, has not been sought.

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8. This Court has considered the submissions of the learned counsel representing the parties. Undoubtedly, the Court has an enabling power to permit the withdrawal of the suit with permission to file a fresh one on the same cause of action after the Court comes to a conclusion that the suit must fail by reason of some formal defect or there are fresh grounds for allowing the plaintiff to institute a fresh suit for the same subject matter of the suit. The aforementioned power is governed by Order XXIII Rule 1(3) CPC, which is extracted as under:-

“ORDER XXIII-Withdrawal and Adjustment of Suits***1. Withdrawal of suit or abandonment of part of claim.***

(1) and (2) XXXX XXXX XXXX XXXX

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect,

or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of 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.”

9. The enabling power referred to above can be exercised only in case of two eventualities envisaged under Order XXIII Rule 1(3) CPC. In the absence of such eventualities, it would not be appropriate for the Courts to exercise such power.

already claimed that the adoption and ceremony of adoption took place on 03.03.1988. Subsequently, the adoption deed was executed and registered on 22.07.1996. Hence, the suit does not suffer from any formal defect. Moreover, from the reading of para 11 of the impugned order, it is evident that the trial Court has not understood the concept of formal defect in the context of Order XXIII CPC. It is provided in the relevant rule that the suit may be permitted to be withdrawn if the nature of such formal defect results in the dismissal of the suit.

11. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned order passed by the trial Court on 31.03.2023, is set aside. The suit is restored to its original number. The trial Court is directed to proceed with the case. The parties, through their learned counsel, are directed to appear before the trial Court on 18.12.2023.

(Anil Kshetarpal)
Judge

November 24, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No