

2023:PHHC:096939

**122-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5358-2019 (O&M)

Date of decision: 28.07.2023

Sukhvir Singh and another

..Petitioners

Versus

Gurmeet Singh (since deceased through his LRs) and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.S.Brar, Advocate for the petitioners
Mr. G.S.Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. This revision petition has been filed challenging the correctness of the order passed by the trial court, while permitting the plaintiff to withdraw the suit with the permission to file a fresh one as per Order XXIII Rule 1 of the Code of Civil Procedure, 1908. Though the aforesaid prayer has been allowed, however, prayer of the plaintiff for refund of the court fee has been rejected. This revision petition has been filed to challenge the aforesaid two orders.

2. Learned counsel representing the petitioners submits that the plaintiff's suit was based on joint Hindu family property and hence, no ad valorem court fee was necessary. He relies upon the judgment passed by the Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others (2010) 12 SCC 112**.

3. It is evident that in the year 2016 the competent court passed an order directing the petitioner (plaintiff) to pay ad valorem court fee for a period of nearly 3 years. The petitioners never challenged the correctness of the aforesaid order. On the other hand, they paid the

amount and continued with the proceedings. Now, nearly after a period of six years of trial, the petitioners filed an application for permission to withdraw the suit with permission to file a fresh one. In the aforesaid application itself, a prayer was made to refund the amount. As already noticed, the court dismissed the same. Despite repeated requests, the learned counsel representing the petitioners failed to draw the attention of the Court to a specific provision either in the Code of Civil Procedure, 1908 or in the High Court Rules and Orders, enabling the plaintiff to claim refund of the court fee on withdrawal of the suit with permission to file a fresh one. However, the learned counsel submits that now he has challenged the correctness of the orders passed in the year 2016 directing them to pay the ad valorem court fee. At this stage, it would not be appropriate to examine its validity, particularly, when the court fee has been paid and thereafter, the plaintiff continued to prosecute the case for three years.

4. In view of the aforesaid facts and discussion, no ground to interfere is made out.

5. Hence, dismissed.

6. All the pending miscellaneous applications, if any, are also disposed of.

28.07.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE