

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

135

2023:PHHC:153021

CR-4184-2022

Date of decision: 01.12.2023

GURBAKSH SINGH @ BAKHA SINGH

..Petitioner

Versus

FATEH SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kulwant Singh, Advocate
and Ms. Pooja Sareen, Advocate
for the petitioner.

Mr. Ramandeep Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. This revision petition has been filed by the defendant (petitioner herein) to assail the correctness of order dated 05.09.2022, while permitting the plaintiffs to withdraw the suit with permission to file a fresh one, subject to the payment of costs of Rs.4,000/-.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The respondents (plaintiffs before the trial Court) filed a suit for grant of decree of declaration. The prayer made in the suit is extracted as under:-

“It is, therefore, prayed to the effect that the Civil Court decree vide Civil Suit No. 228 of 1984 decided on 29.3.1984 passed by the Court of Sh. K.C. Dang, Ld. SSJ, Karnal and mutation No. 1450 which was entered and sanctioned on the basis of said Civil Court decree be declared as illegal, null and void, inoperative, in contravention of law and also not binding upon the rights of the plaintiffs and a decree for mandatory injunction by directing the defendant to transfer his share which he inherited after the death of Sadha Singh with consequential relief of permanent injunction restraining the defendants from alienating the

suit land by way of sale, mortgage, charge, lien, gift etc. may please be passed in favour of the plaintiffs and against the defendants with costs in the interest of justice.

Any other relief of which plaintiffs are found entitled to may also be granted.”

4. After a passage of six years, the plaintiffs filed an application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908, with a prayer to withdraw the suit with permission to file a fresh one. It was disclosed that the plaintiffs inadvertently failed to challenge the earlier decree dated 25.11.1969, passed by the Court of Sh. V.K. Jain, HCS. The Court has permitted the plaintiffs to withdraw the suit with permission to file fresh one despite the fact that the defendant specifically asserted that the plaintiffs can amend the plaint.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. On the one hand, the learned counsel representing the petitioner contends that the order passed by the trial Court is manifestly erroneous, whereas, on the other hand, the learned counsel representing the respondents submits that the trial Court has exercised its discretion and even if the suit does not suffer from a formal defect, still the Court can permit withdrawal of the suit on other sufficient grounds. He submits that this Court should not interfere in discretion exercised by the trial Court.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. The enabling power under Order XXIII Rule 1 of the Code of Civil Procedure, 1908, is to promote the ends of justice. This provision has been provided to enable the plaintiffs to withdraw the suit if due to a formal

defect or any other sufficient reason, the suit must fail. However, such enabling power cannot be used to defeat the ends of justice. In this case, the proceedings in the suit have continued for a period of six years. The learned counsel representing the respondents admits that the suit does not suffer from a formal defect. The petitioner (the defendant before the trial Court) has already stated the he has no objection if the plaintiffs are permitted to amend the suit. In these circumstances, it was not appropriate for the trial Court to permit the plaintiffs to withdraw the suit with permission to file a fresh one.

9. Keeping in view the aforesaid facts, the impugned order passed by the trial Court is set aside and the suit filed by the plaintiffs is restored to its original number. If the respondents (the plaintiffs before the trial Court) file an application for permission to amend, the stand taken by the petitioner will be kept into consideration.

10. With these observations, the present petition is allowed.

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

December 01st, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*