



119

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

CR-412-2024 (O&M)

Date of decision : 14.05.2024

Shri Akhada Panchayati Nirmal Nanak Sahi Bharat Guru

Sheri Nand Singh Sahib Ji

... Petitioner(s)

Versus

Kaushalya Sharma & Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rishi Pal Singh, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the orders dated 21.03.2018 (Annexure P-2), dated 29.01.2019 (Annexure P-4) and dated 15.11.2023 (Annexure P-8).

2. Brief facts relevant to the present case are that the plaintiff-respondent Nos.1 and 2 filed a suit for permanent injunction stating therein that defendant No.1-petitioner herein was recorded owner of land measuring 59 kanals 14 marlas comprised in Khewat No.2249 Khatauni No.2569 Murabba No.222 Kila No.74/3 (59-14) situated at revenue estate Darra Kalan, Tehsil Thanesar, District Kurukshetra vide jamabandi for the year 2005-06. It was further averred that vide a resolution dated 21.08.2005 a decision was taken by defendant Nos.2 to 12 along with one Mahant Mittar



Parkash Singh Kothari, being Mahants of defendant No.1-petitioner herein, to sell some part of the said land. It was further averred that the land measuring 18476 sq. yds. was sold including area of a park measuring 1620 sq. yds out of land mentioned in para 1 contrary to the T.P. Scheme for Part II of U/B area. It was further averred that the land measuring 1620 sq. yds was left as Park as per T.P. Scheme for Part II of U/B area. Injunction was sought to protect the park from encroachment by defendant No.1 to 20 in the suit. Vide order dated 21.03.2018 (Annexure P-2) the defendants were directed to maintain *status quo* qua the suit property while fresh notices were issued to defendant Nos.1 to 10, 12 and 13. Vide order dated 29.01.2019 (Annexure P-4) the plaintiff-respondent Nos.1 and 2 sought permission to withdraw the suit itself and on their statements recorded, the suit being at the preliminary stage was permitted to be withdrawn. It is to be noticed that there was a simpliciter withdrawal of the suit. Subsequently, an application was filed under Section 151 of the Code of Civil Procedure, 1908 by the defendant No.1-petitioner herein for deciding the suit on merits on the ground that the plaintiff-respondent Nos.1 and 2 were permitted to withdraw the suit without any reason. It was further averred in the application that the plaintiff-respondent Nos.1 and 2 succeeded in getting an interim injunction and on the basis of the interim injunction, an FIR was registered. The Trial Court vide order dated 15.11.2023 (Annexure P-8) dismissed the application. Hence, the present revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the suit should not have been withdrawn without notice to the



defendant No.1-petitioner. It is further the contention of the learned counsel that because of the interim order, an FIR has been lodged by the plaintiff-respondent Nos.1 and 2.

4. I have heard the learned counsel for the petitioner.

5. Order 23 Rule 1 CPC reads as under :

“1. Withdrawal of suit or abandonment of part of claim.

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.”

6. Hon’ble Supreme Court in the case of **Sneh Gupta Vs. Devi Sarup & Ors. [2009 (2) RCR Civil 129]** has held that a right to withdraw a suit by the party bringing the suit to be unqualified if no right has been vested in any other party. Para Nos.28 and 29 of the said judgment read as under :

“28. It is also well known that a suit cannot be withdrawn by a party after he acquires a privilege. In R. Ramamurthy Ayer v. Raja V. Rajeswara Rao [(1972) 2 SCC 721], this Court held :

“12. Coming back to the question of withdrawal of a suit in which the provisions of Sections 2 and 3 of the Partition Act have been invoked we find it



difficult to accede to the contention of the appellant that the suit can be withdrawn by the plaintiff after he has himself requested for a sale under Section 2 of the Partition Act and the defendant has applied to the court for leave to buy at a valuation the share of the plaintiff under Section 3. In England the position about withdrawal has been stated thus, in the Supreme Court Practice, 1970 at p. 334:

“Before Judgment - Leave may be refused to a plaintiff to discontinue the action if the plaintiff is not wholly dominus litis or if the defendant has by the proceedings obtained an advantage of which it does not seem just to deprive him.”

As soon as a shareholder applies for leave to buy at a valuation the share of the party asking for a sale under Section 3 of the Partition Act he obtains an advantage in that the court is bound thereafter to order a valuation and after getting the same done to offer to sell the same to such shareholder at the valuation so made. This advantage, which may or may not fulfil the juridical meaning of a right, is nevertheless a privilege or a benefit which the law confers on the shareholder. If the plaintiff is allowed to withdraw the suit after the defendant has gained or acquired the advantage or the privilege of buying the share of the plaintiff in accordance with the provisions of Section 3(1) it would only enable the plaintiff to defeat the purpose of Section 3(1) and also to deprive the defendant of the above option or privilege which he has obtained by the plaintiff initially requesting the court to sell the property under Section 2 instead of partitioning it. Apart from these considerations it would also enable the plaintiff in a partition suit to



withdraw that suit and defeat the defendant's claim which, according to Crump J., cannot be done even in a suit where the provisions of the Partition Act have not been invoked."

Yet again in R. Rathinavel Chettiar v. V. Sivaraman [(1999) 4 SCC 89], this Court, stated the law, thus :

"22. In view of the above discussion, it comes out that where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained."

29. A right to withdraw a suit in the suitor would be unqualified, if no right has been vested in any other party. [See Bijayananda Patnaik v. Satrughna Sahu and Ors. [(1964) 2 SCR 538] and Hulas Rai Baij Nath v. Firm K.B. Bass & Co. [(1967) 3 SCR 886]]"

7. In the present case, the argument of the learned counsel that the suit should not have been allowed to be withdrawn without notice to them deserves to be rejected. Had it been a case where liberty had been sought for filing the suit afresh on some ground, the argument of the learned counsel could have been accepted. However, in the present case it is a case of simpliciter withdrawal without permission having been sought or without liberty having been taken for filing of a fresh suit. Right being unqualified and no right having been vested in any other party, there was no reason for



the Court to deny the withdrawal. The argument of the learned counsel that because of the stay order an FIR has been lodged also deserves to be rejected. The stay order itself is no longer in existence as the suit itself stands withdrawn. It is trite that all interim orders merge in the final order.

8. In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.05.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO