



125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-498-2022 (O&M)

Date of decision: 27.05.2024

Mukesh Ratan and another

....Petitioners

Versus

Kirnesh Ratan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Kumar Yadav, Advocate for the petitioners

Mr. Rohit Mittal, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. The defendants assail the correctness of the trial court's order dated 07.03.2020 while permitting the plaintiff to withdraw the suit with permission to file a fresh one on the same cause of action. On 06.04.2015, the plaintiff (respondent herein) filed a civil suit for the grant of decree of declaration that out of 1/7th share of deceased Ram Chander, the plaintiff, defendant no.1 and proforma defendant no.3 and 4 are having some share in the property. After a passage of nearly 5 years, the plaintiff filed an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for permission to withdraw a suit in order to file a fresh one. The same has been allowed with the following order:-

"I have heard the learned counsel for the parties and gone through the case file very carefully. With the present application, applicant/plaintiff wants to withdraw the present suit with permission to file fresh suit. After going through the submission made by both parties,



case court is of the considered view that no prejudice is going to be caused to defendants if the present application is allowed. Hence, the present application under Order 23 Rule 3 read with section 151 of CPC stands allowed and disposed of.

Hence, present suit is hereby dismissed as withdrawn with permission to file fresh suit subject to just exceptions of law of limitation. File be consigned to the record-room after due compliance.”

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the respondents submits that this revision petition has been filed after a passage of 2 years. Hence, the revision petition should be dismissed on this score.

4. Per contra, the learned counsel representing the petitioners submits that the impugned order was passed when COVID-19 pandemic was on its peak and the revision petition was filed, the moment there was some respite. He further submits that the order passed by the trial court does not fulfil the requirements of Order XXIII Rule 1 CPC.

5. This Court has evaluated, considered and analysed the submissions made by the learned counsel representing the parties.

6. Order XXIII 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. 178



(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(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.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”

7. Under Order XXIII Rule 1 (3) CPC, the court can permit the plaintiff to withdraw the suit with liberty to file a fresh suit in respect of the subject matter of such suit or part of the claim, if the court is satisfied that the suit must fail, for the reasons of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit or a part of a claim. Hence, one of the two conditions is required to be fulfilled before permission to file a fresh suit is granted while permitting the plaintiff to withdraw the suit.

First, the court must be satisfied that the suit must fail by the reason of



some formal defect or second, there are sufficient grounds for allowing the plaintiff to institute a fresh suit. It is evident from the reading of the impugned order that the trial court has failed to record any satisfaction that the suit filed by the plaintiff must fail by the reason of some formal defect. There is also no finding that there are sufficient grounds for allowing the plaintiff to institute a fresh suit. After a passage of trial of 5 years of a suit, it is not appropriate for the trial court to permit withdrawal of the suit unless the requirements of the Order XXIII Rule 1(3) CPC are fulfilled.

8. Keeping in view the aforesaid discussion, this Court is left with no choice but to set aside the impugned order while remitting the matter back to the trial court for proceeding to decide the suit. The parties through their counsels are directed to appear before the trial court on 19.07.2024.

9. Disposed of.

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

27.05.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE