



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2314 of 1994 (O&M)

Date of Order:10.05.2024

Fantu Ram

.Appellant

Versus

Ramji Lal (since deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate
for the appellant.

Mr. Gurfateh Mann, Advocate, for
Mr. B.S.Bedi, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. This is the plaintiff's regular second appeal against a compromise decree passed by the First Appellate Court on the joint statement of the parties. The joint statement was recorded in the court which was duly signed by the parties as well as their respective counsel. The same reads as under:-

“Copy of joint statement of Shri Nathu Ram, appellant no.2 on SA. Fantu Ram respondent on SA and Ld. Counsel for the parties without oath:

The parties have compromised. The site plan Ex.P.1 is correct and admitted in which the property in dispute has been shown with letters ABCD and with red colour. The appellants shall be deemed to be owners in possession of the property in question shown with red colour in the site plan Ex.P.1 and they shall pay Rs.50,000/- to the respondent in lieu of some constructions and



his possessory rights in the property in question. The appellants shall deposit the above said amount of Rs.50,000/- in the court for payment to the respondent on or before 25.07.94, failing which the appeal shall stand dismissed. The respondent shall closed his windows, doors, ventilators, parnalas etc. if any opening towards the property in dispute shown by letters ABCD on the site plan Ex.P.1 towards Western side, and he shall have no concern towards the Western side on his house. The appeal be accepted accordingly. The judgment and decree of the ld. trial Court be set aside on fulfillment of conditions of payment by the appellants as mentioned above. The parties may be left to bear their own costs. This statement may be made part of the decree. Decree shall be operative on deposit of the above mentioned amount of Rs.50,000/- in the court for payment to the respondent.

RO&AC

LTI Nathu Ram

sd/- A.K.Sawhney, Adv.

LTI Fantu

Sd/- A.K.Kapoor, Adv.

11.5.94”

Sd/-

A.D.J. Karnal

11.5.94

2. The learned counsel representing the appellant submits that the requirement of Order XXIII Rule 3 CPC has not been fulfilled because there was no agreement/settlement in writing between the parties. He submits that the court cannot dispose of the suit unless there is a settlement in writing and signed by the parties.

3. This court has considered the submissions of the learned counsel representing the parties.



4. Order 23 Rule 3 CPC reads as under:-

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.

(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.]”

5. The parties and their respective counsel suffered a joint statement in the court which was not only recorded but also signed by all of them including their respective advocates. Such settlement is in writing and signed by the parties.

6. Hence, there is no substance in the argument of the learned counsel representing the appellant.

7. Dismissed.

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

May 10, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO