

2024:PHHC:034595

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
130**

CR-1489-2024

Date of decision: March 11, 2024

GYAN SINGH AND ANOTHER

.....PETITIONERS

V/S

SURENDER KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Tejas Bansal, Advocate,
for Mr. Sanjiv Kumar Aggarwal, Advocate,
for the petitioners.

RITU TAGORE, J. (ORAL)

1. Prayer in this revision petition is for setting aside the impugned order dated 21.12.2023 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Rewari, vide which an application dated 21.12.2023 (Annexure P-6) filed by respondent No. 2 (plaintiff No. 2 before Trial Court)- Surender Singh for withdrawal of the Civil Suit No. 50002 of 2019 was allowed.

2. Considering the limited scope of prayer, notice to the respondents has been dispensed with.

3. Learned counsel for the petitioners submits that respondent No. 1 and 3 (plaintiffs No. 1 and 3 before the learned trial Court) instituted a suit for mandatory and permanent injunction against the petitioners (defendants before the learned trial Court), claiming them to be the owner of the suit property and further sought the relief directing removal of construction raised on the suit property and its restoration to its previous condition.

4

Learned counsel contended that the petitioners appeared before

the learned trial Court and filed their written statement denying all the allegations made by respondents (plaintiffs). It is stated that the case was at the stage of presenting rebuttal evidence and arguments (Annexure P-4), when respondent No. 2 moved an application dated 21.12.2023 to prepone the date of hearing for withdrawal of the said suit. It is also submitted that prior to this, respondent No. 2 filed a revision petition against the order dated 01.02.2016, but later withdrew it (Annexure P-5).

5. Learned counsel submits that the impugned order dated 21.12.2023 is liable to be set aside as it fails to comply with the provisions of Order 23 of Code of Civil Procedure, 1908 as no notice was issued to the other plaintiffs before allowing the application moved by respondent No. 2. Learned counsel submits that the provisions of Order 23 Rule 1 (5) CPC provide that Court cannot permit one of the several plaintiffs to withdraw/abandon any suit without issuing notice to other plaintiffs. It is further contended that the reason for withdrawal of the suit, as disclosed by the counsel for respondent No. 2, is that he had sold the suit property to another person, who may not institute a fresh suit against the petitioners, which would again burden them with fresh litigation and cause harassment. It is, thus, submitted that the order dated 21.12.2023 is liable to be set aside.

6. I have heard the learned counsel for the petitioners and with his able assistance, have gone through the paper-book.

7. The petitioners before this Court were the defendants before the learned trial Court. The petitioners do not claim to have filed any counter claim or set off against the respondents in the above mentioned suit, and a *simpliciter* withdrawal of the suit, did not prejudice them. The withdrawal of the suit by one of the plaintiffs, may give cause for the co-plaintiff to agitate the withdrawal of the said suit without his/their consent. Since plaintiffs are

not before this Court, Order 23 Rule 1 (5) CPC as relied upon by the petitioners (defendants) is not applicable in their favour. The Order 23 Rule 1 (5) CPC reads as follows:-

“(5) Nothing in this rule shall be deemed to authorize 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 plaintiffs.”

8. Admittedly, the petitioners are defendants, not plaintiffs before the trial Court, and therefore, they have no *locus standi* to assail the order in question. Furthermore, the apprehension as raised by the petitioners, that a subsequent purchaser may institute a suit against them does not give any cause of action to contest the order in question.

9. In view of the aforesaid discussion, there is no merit in the present revision petition and, therefore, the same stands dismissed.

10. In the light of the dismissal of the main revision petition, pending Civil Miscellaneous applications, if any, also stand disposed of accordingly.

March 11, 2024

pj

**(RITU TAGORE)
JUDGE**

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