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

CR-1271-2021 (O&M)

Date of Decision: 26.04.2024

RAM PAL AND ANR**.....PETITIONERS****VS****RAJENDER SINGH AND ANR****.....RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Paramveer Singh, Advocate for the petitioners.

Respondent No.1 already proceeded ex-parte.

None for respondent No.2.

GURBIR SINGH, J.

1. Challenge in this petition is to the order dated 17.02.2020 passed by learned Additional Civil Judge (Senior Division) Guhla, District Kaithal whereby the respondents/plaintiffs have been permitted to withdraw the suit and to file fresh suit subject to certain conditions.

2. The parties are being addressed as per the original suit.

3. The plaintiffs filed a suit for possession by way of redemption of mortgage on the ground that predecessors-in-interest of the plaintiffs are owners of the suit property and suit property was allotted after consolidation as per jamabandi for the year 1882-83. The predecessors-in-interest of the plaintiffs were having 2/3rd share in the said land. The land was mortgaged with possession by the predecessors-in-interest of the plaintiffs for consolidation with the predecessors-in-interest of the defendants. The

plaintiffs many times offered the mortgage amount to the defendants and to get the land redeemed and further requested to give the possession of the land to plaintiffs but defendants refused for the same. After framing of the issues and recording of the evidence, plaintiffs moved one application for leading additional evidence, which was dismissed vide order dated 11.11.2016 (Annexure P-5). Plaintiffs approached this Court by way of CR-7913-2016 to lead additional evidence and to examine the witness, which was allowed vide order dated 20.01.2020 subject to payment of Rs.30,000/- as costs. Plaintiffs also moved an application for amendment which was dismissed by trial Court but was allowed by this Court vide order dated 20.01.2020 passed in CR-7786-2016 subject to payment of Rs.30,000/- as costs. The plaintiffs did not lead any additional evidence but made a statement on 17.02.2020 seeking withdrawal of the suit with permission to file fresh one. Accordingly vide impugned order dated 17.02.2020, the suit was allowed to be withdrawn with permission to file fresh suit. The plaintiffs have filed a fresh suit, copy of which is annexed as Annexure P-8.

4. Learned counsel for the petitioners/ defendants argues that there was no application for the withdrawal of the suit and on the statement of the counsel for the plaintiffs, suit was allowed to be withdrawn due to some technical defect, but no such technical defect was disclosed. It is further argued that suit was allowed to be withdrawn at the stage of rebuttal and arguments.

5. Despite notice to the counsel for respondent No.2, none has put in appearance on behalf of the respondent No.2.

6. I have heard the submissions made by the learned counsel for the petitioners.

7. Under the provision of Order 23 Rule 3 CPC, if there is formal defect, plaintiff at any stage of the suit is entitled to withdraw the suit or abandon a part of his claim against all or any of the defendants.

Order 23 Rule 3 CPC reads as under:-

(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 a 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.”

8. In case ***Gurdish Singh Vs. Sukhdeep Singh and Anr:2022 (3) RCR (Civil) 661***, it has been held by this Court if plaintiff wants to withdraw the suit with liberty to file a fresh one on the same cause of action, then plaintiff is required to establish that the suit suffers from a formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter. The Court cannot permit to withdraw the suit with liberty to file a fresh one on the same cause of action without any application for the said purpose. In the case of ***Satwant Singh Vs. Gurdev Singh and Others:2016 (1) R.C.R(Rent) 421***, it has been held by this Court that in the application, the plaintiff must disclose the technical defects in the pleadings which cannot be cured by any other means including the

amendment application. In the case in hand, the plaintiffs moved an application for amendment of the plaint which was dismissed. Plaintiffs moved another application for additional evidence and the same was also dismissed but two separate revision petitions were filed both applications of the plaintiff were allowed subject to payment of Rs.30,000/- costs each vide order dated 20.01.2020. Instead of amending the plaint and leading additional evidence as per the orders passed by this Court, learned counsel for the petitioner made a statement which is as under:-

“Statement of Sh. Nek Ram, Counsel for plaintiff.

Stated that parties wants to withdraw the civil suit because of technical defect. Permission be given to file fresh one.”

On the basis of said statement, the impugned order was passed. The same is as under:

Today, the case was fixed for filing amended plaint, evidence of plaintiff and for making payment of cost by the plaintiff. Neither cost paid nor amended plaint filed by the plaintiff. Learned counsel for the plaintiff has appeared and suffered a statement due to some technical reason, he do not want to try the present suit and withdraw the same. He has requested that permission may be given to file fresh suit. Separate statement to that effect recorded separately.

Heard. In view of the aforesaid statement of learned counsel for plaintiff, present suit is hereby dismissed as withdrawn. Permission is hereby given to the plaintiff to file fresh suit if permissible by law as well as subject to the law of limitation and payment of cost in compliance of orders dated 20.01.2020 passed by Hon'ble High Court in Civil Revision No.7786 of 2016 and Civil Revision No.7913 of 2016. File be consigned to the record room after due compliance.

9. Neither any application was moved for the withdrawal of the suit due to some technical defect nor any such technical defect has been disclosed and there is no satisfaction of the Court recorded in the impugned

order that suit would fail due to some formal defect, so impugned order is not sustainable in the eyes of law.

10. On asking, learned counsel for the petitioners submits that subsequent suit is still pending and is not yet decided.

11. In the light of above discussion, the impugned order is hereby set aside. Trial Court shall proceed further with the case and shall not proceed with the subsequent suit.

12. Learned counsel for the petitioners submits that suit was filed long time back so trial Court be directed to expedite the proceedings of the case.

13. Keeping in view the assertions of the learned counsel for the petitioners, the trial Court is directed to dispose of the case expeditiously without any delay in accordance with law. The petitioners shall appear before the trial Court on 16.05.2024.

14. The present petition stands disposed of accordingly.

15. Pending application, if any, shall also stand disposed of.

26.04.2024
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(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>