

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-100-2024 (O&M)
Date of decision: 09.01.2024

Megh Raj and others
...Petitioners

Versus
Babita and others
...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

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

VIKAS SURI, J.

1. This is a petition under Article 227 of the Constitution of India praying for setting aside order dated 09.11.2023 (Annexure P-7) whereby the application moved by respondent No.1, for restoration of the suit that had been withdrawn on an application moved by counsel for respondent No.1 and respondent No.3, has been allowed.
2. The facts in brief are that the plaintiffs, namely Kuldeep and Babita, both children of Megh Raj had instituted a suit for declaration to the effect that the transfer deed bearing No.2664/1 dated 24.12.2020 executed by defendant No.1 (their father) in favour of defendant Nos.2 to 5 (their other siblings), and mutation No.9334 sanctioned on the basis of the aforesaid transfer deed are illegal, null and void and not binding upon the rights of the plaintiffs and proforma defendants, with consequential relief of permanent injunction. During the pendency of the aforesaid suit, plaintiff Kuldeep moved an application for taking up the

file and permission for the suit to be dismissed as withdrawn. The said plaintiff also suffered a statement dated 24.05.2022, which reads as thus:

“Statement of Kuldeep s/o Sh. Megh Ram, VPO Khond, Tehsil Gharaunda, District Karnal.

“States that I do not want to proceed with my case. I may permit to withdraw the suit. I have no objection of consigning the file to record room.

RO & AC
Sd/-
Kuldeep
24.05.2022”

3. Considering the aforesaid, in the light of the statement suffered by plaintiff No.1-Kuldeep, the suit was dismissed as withdrawn and the file was ordered to be consigned to the record room. The order dated 24.05.2022 reads as under:-

“File taken up today an application for withdrawal of the present suit moved by plaintiff. Plaintiff Kuldeep suffered a statement to the effect that he does not want to proceed further with the present case and wants to withdraw the same. The plaintiff is duly identified by his counsel.

Heard. Keeping in view the statement suffered by plaintiff, the present suit stands dismissed as withdrawn. File be consigned to the record room after due compliance.”

4. Thereafter, the second plaintiff-Babita moved an application for restoration of the suit that was dismissed as withdrawn on 24.05.2022 on the statement of plaintiff No.1-Kuldeep and for transposing Kuldeep as defendant No.5-A. It was pleaded therein that plaintiff No.2-Babita was residing in Punjab and was assured by plaintiff No.1 that he would appear and pursue the case on all dates and there was no need for her to

come from Punjab on each and every date of hearing. It was further assured that when her presence would be required, then she would be called. It is further pleaded that in the second week of October, 2022 when she was visiting her parental village Kohand, she learnt from her relatives that plaintiff No.1-Kuldeep has compromised the matter with the defendants and had got the civil suit dismissed as withdrawn and thereafter, their father Megh Raj (defendant No.1) transferred the land in the name of plaintiff No.1 vide transfer deed No.759/1 dated 09.06.2022. The contention raised was that the Plaintiff No.1 had got the entire suit dismissed as withdrawn, whereas he could have withdrawn the suit only to the extent of his interest therein.

5. Upon notice, the aforesaid application was opposed by filing reply thereto. Vide order dated 09.11.2023, the said application seeking restoration of the suit that was dismissed as withdrawn on the statement of plaintiff No.1-Kuldeep, was allowed. The trial Court noticed that no statement was suffered on behalf of plaintiff No.2-Babita for withdrawal of the suit and learned counsel for the plaintiffs had also appeared and identified plaintiff No.1 only and he had not suffered any statement on behalf of plaintiff No.2-Babita to withdraw the suit qua the said plaintiff. It was thus held that plaintiff No.1 had no locus standi to withdraw the suit on behalf of plaintiff No.2 and accordingly, the suit was resorted to its original number qua plaintiff No.2 - Babita and the same stood dismissed as withdrawn qua plaintiff No.1 - Kuldeep.

6. Learned counsel for the petitioner raising challenge to the order dated 09.11.2023, has not been able to point out any material from

the record to show that the findings recorded by the trial Court, while restoring the suit to its original number qua plaintiff No.2 - Babita, were incorrect or beyond record. On the contrary, a perusal of the application moved by plaintiff No.1 and the statement suffered by him on 24.05.2022, leaves no room for any doubt that no request was made on behalf of plaintiff No.2-Babita seeking withdrawal of the suit on her behalf. The petitioner as such has not been able to point out any infirmity in the impugned order dated 09.11.2023.

7. Keeping in view the above, this Court finds no illegality or perversity in the impugned order and the present petition being devoid of merit, is dismissed *in limine*.

January 09, 2023
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No