



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 23.07.2024

Judgment delivered on: 05.08.2024

+ CM(M) 1214/2018 & CM APPL. 41355/2018

MANJEET SINGH

.....Petitioner

versus

SANT KAUR

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Md. Azam Ansari, Advocate.

For the Respondent: Mr. Amit Nahata, Mr. Ajay Bansal, Mr. Jitender Pal Singh, Mr. Deepak Rana, Mr. Vikrant Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner herein is defending a civil suit filed by his real sister. Such suit¹ (hereinafter referred to as the present suit) was taken up by the learned Trial Court on 01.09.2018. The petitioner (defendant before the learned Trial Court) had moved three applications and his two such applications have been dismissed which has compelled him to file the present petition under Article 227 of the Constitution of India.

¹ Civ DJ/611263/16



2. For the sake of convenience, I would be referring to the parties as per their nomenclature before the learned Trial Court and, therefore, the petitioner herein would be referred to as defendant and respondent Smt. Sant Kaur would be referred to as plaintiff.

3. The emphasis is primarily concerning dismissal of his application which he had moved under Order XXIII Rule 1 read with Order VII Rule 11 CPC.

4. According to the defendant, earlier also the plaintiff, his sister, had filed a similar suit which she had withdrawn. Though, she had sought liberty from the learned Trial Court to institute the suit afresh but since such liberty was not granted, the present suit is not maintainable and is liable to be dismissed in terms of Order XXIII Rule 1 CPC.

5. There is no dispute that earlier the plaintiff had filed a civil suit² (hereinafter referred to as earlier suit).

6. In her such earlier suit, the plaintiff had claimed that her said brother was Granthi/Sewadar in Gurudwara Sahib and on account of his misconduct, the Gurudwara Management Committee terminated his services which rendered him and his wife shelterless. They contacted her and requested her to permit them to reside at second floor portion at the suit property³. On account of natural love and affection, they were permitted by the plaintiff but since their intention had become malafide and they did not vacate the premises, she

² Suit No.141/2015

³ WZ-122, Gali No.7, Shiv Nagar, Janakpuri, New Delhi-110058



filed such 'earlier suit' seeking decree of mandatory injunction against them, directing them to remove themselves from the second floor of the suit premises. She also sought damages and cost.

7. When the above earlier suit was pending adjudication, plaintiff made a statement before the Court that she may be permitted to withdraw the same with liberty to file suit afresh on the same cause of action. Her statement was recorded and the learned Trial Court, accordingly, dismissed the suit as withdrawn.

8. In order to comprehend the controversy in desired manner, it will be appropriate if I take note of the statement made by the plaintiff in such earlier suit and the relevant portion of the order passed by the then learned Trial Court on 08.07.2015.

9. Such statement made by the plaintiff reads as under:-

"Statement of Smt. Sant Kaur, w/o Sh. Chattar Singh, r/o WZ-122, gali no.7, Shiv Nagar, New Delhi-110058.

On S.A.

I am plaintiff in the present suit. I withdraw the present suit. The same may be disposed of accordingly. I may be given liberty to file fresh suit, if any, on the same cause of action."

RO & AC

*(Subhash Kumar Mishra)
Civil Judge-05/West/THC
08.07.2015"*

10. The relevant extract of the order dated 08.07.2015 reads as under:-



“At this stage, plaintiff states that she wants to withdraw the present suit with liberty to file fresh suit, if any, on the same cause of action.

Her statement to this effect also recorded separately.

In view of the said statement, suit of the plaintiff stands dismissed as withdrawn.

File be consigned to Record Room.”

11. The sole controversy revolves around the fact whether the liberty as prayed was granted or not.

12. This becomes important in view of Order XXIII Rule 1 CPC, which 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.

(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.”*

13. According to defendant, though the liberty had been sought specifically by the plaintiff, but there is no specific order granting such liberty and, therefore, by necessary implication, it has to be assumed that the liberty was not granted and, therefore, the present suit is liable to be dismissed as the plaintiff is precluded from instituting fresh suit in respect of same subject matter.

14. There is no dispute that the cause of action, in both the suits, remains almost similar.

15. The learned Trial Court while rejecting the above such request made by the defendant came to the conclusion that liberty was implicit. It also observed that when the suit was withdrawn, the counsel for the defendant was also present before the learned Trial Court and did not raise any objection and, thus, observed that there was no reason to reject the plaint.



16. I do not find any reason to come to any contrary view.

17. I have seen order dated 08.07.2015 whereby the earlier suit was dismissed. Such order passed by the then learned Trial Court in relation to the earlier suit cannot be read in isolation. It has to be read in conjunction with the statement made by the plaintiff.

18. The plaintiff had made a very specific and conscious statement before the Court that she wanted to withdraw her suit and, in her statement, made on oath, she also prayed that she may be granted liberty to file fresh suit, if any, on the same cause of action. The order passed by the learned Trial Court is after her such statement was recorded and the learned Trial Court, in its order dated 08.07.2015, specifically observed that in view of said statement, the suit of the plaintiff stands dismissed as withdrawn.

19. I once again lay emphasis on this particular line.

20. The Court had dismissed the suit as withdrawn “in view of the said statement”.

21. Therefore, for all practical purposes, the withdrawal was with the clear understanding that the plaintiff was being given liberty to institute the suit afresh on the same cause of action.

22. Had that not been so, there would not have been any occasion for the plaintiff to have withdrawn her suit. She might have, in such an eventuality, pursued her such earlier suit.



23. Be that as it may, it is quite clear and evident that she had withdrawn the suit while reserving her right to institute suit afresh and the Court after comprehending her such statement, permitted her to withdraw the same and, therefore, by necessary inference, it has to be assumed that the liberty was implicit and in-built.

24. I have also seen the judgments on which the defendant has relied upon.

25. Unfortunately, the defendant cannot dig out any advantage from any of those. In *Amarjeet Singh @ Rinku vs. Surjeet Singh & Ors.*⁴, the facts were totally different. Para 15 and 16 of said judgment read as under:-

"15. As far as the grounds given by the learned ADJ for rejection of the plaint are concerned, from the trial court record, I find that the appellant / plaintiff on or about 4th June, 2012 filed two suits in the court of the civil judge, Delhi. One for permanent injunction for restraining his father and mother for selling, alienating or parting with the property or from demolishing the same or carrying out any reconstruction thereof and the other for the reliefs of partition and possession. The suit for permanent injunction was dismissed as withdrawn on 05th February, 2013 without liberty to file afresh suit on the same cause of action. The other suit for partition was also dismissed as withdrawn/settled on 06th October, 2013.

16. Though undoubtedly there has been no adjudication on merits as contended by the Counsel for the appellant / plaintiff but order 23 rule 1 of the CPC bars the appellant / plaintiff from bringing a suit on the same cause of action. Even if it be the plea of the appellant / plaintiff that the respondent / defendant Nos. 1 & 2 have not abided by the compromise / settlement in terms whereof the appellant / plaintiff withdrew the earlier suit for partition, the remedy of the appellant/plaintiff is to apply in the same suit and not by filing a fresh suit."

⁴ (2016) SCC OnLine Del 1230



26. It clearly shows the distinctive features of that particular case. In that case, the withdrawal with respect to the second suit was on the basis of the settlement arrived at between the parties and it was in that context that this Court had observed that if the terms were not complied with by the parties in terms of the compromise, *the remedy was to apply in the same suit and not by filing a fresh suit*. In the case in hand, the withdrawal is for a very specific reason and does not emanate from any settlement.

27. Reliance upon *Dropti Devi vs. Ram Pyari & Ors.*⁵, is also misplaced as in that case, the withdrawal was simpliciter without any liberty.

28. There cannot be any dispute with respect to the proposition laid down in *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior And Ors.*⁶ wherein it has been categorically observed that if there is withdrawal of a petition even under Article 226/227 of the Constitution of India, without permission to file the same afresh, the bar provided under Order XXIII CPC would stand attracted except where the writ was in the nature of Habeas Corpus or seeking enforcement of right provided under Article 21 of the Constitution of India.

29. The facts in *Ranen Roy vs. Prakash Mitra*⁷ were also different as in that case, the tenant had withdrawn the objection, unconditionally, without seeking any liberty and accordingly the objections were dismissed as withdrawn and

⁵ 2015 SCC Online Del 12604

⁶ (1987) 1 SCC 5

⁷ (1998) 9 SCC 689



the tenant was granted one year time to handover the vacant possession. After expiry of such period of one year, the tenant moved another application before the same Rent Controller raising fresh objections. It was in the aforesaid context that second set of objections were held not maintainable in view of Order XXIII Rule 1 CPC.

30. Keeping in mind the peculiar facts of the case, the defendant cannot also dig out any advantage from *Bakhtawar Singh and Another vs. Sada Kaur and Another*⁸.

31. Learned counsel for the plaintiff has though relied upon *Sucha Singh Sodhi (Dead) Through Legal Representatives vs. Baldev Raj Walia and Another*⁹, but in that case, the facts were different as the previous suit was for permanent injunction, which was withdrawn with liberty to file a suit afresh and the second suit was seeking specific performance with respect to an agreement between the parties in relation to the suit property and it was in the aforesaid peculiar factual matrix that the second suit was held maintainable.

32. In the present case, it is quite clear that the plaintiff had sought liberty to file the suit afresh and her statement in this regard was recorded and based on such statement only, the suit was dismissed as withdrawn and, therefore, as a necessary corollary, it has to be assumed that the liberty had been granted to the plaintiff.

⁸ (1996) 11 SCC 167

⁹ (2018) 6 SCC 733



33. By no stretch of imagination, it can be assumed that it was denied.

34. To the aforesaid extent, there is no merit and substance in the aforesaid contention.

35. It is also contended by learned counsel for the defendant that one another suit has been filed which is pending adjudication before this Court. Such suit has been filed by one Sh. Bhoun Singh and the suit had been registered as CS(OS) 578/2017 and plaintiff Smt. Sant Kaur is defendant No.1 in the above suit and in said suit, there is a direction to maintain status quo with respect to the entire suit property (including the second floor) and, therefore, the present suit should not have been permitted to be proceeded and should have been adjourned *sine die*. Such request made by the defendant (petitioner herein) also did not find favour with the learned Trial Court.

36. I am, however, of the considered opinion that the request made by him in this regard is premature and, therefore, not entertainable. As and when, the proceeding of the present suit reach the stage of final adjudication, the petitioner can always draw the attention of the learned Trial Court to any such order and the learned Trial Court would, in such a situation, it is expected, take appropriate call. But, merely, because the above suit filed by Bhoun Singh is pending adjudication before this Court, it would not automatically mean and indicate that the proceedings of the present suit need to be adjourned *sine die*. Moreover, without there being a comprehensive trial, it



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cannot be concluded by the learned Trial Court that the plaintiff is not the owner of the suit property.

37. Consequently, finding no merit or substance in the present petition, the same is dismissed.

(MANOJ JAIN)
JUDGE

August 05, 2024
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