

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.51 of 2023

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Ram Prakash Sahu @ Prakash Sahu, male, aged 61 years, Son of Late Uchit Lal Sahu @ Late Domu Sahu Resident of Ward no.-4, Village-Bhagwatipur P.S.-Pandaul, District-Madhubani (Bihar).

... .. Petitioner/s

Versus

1. Sharvan Narayak, Son of Late Surat Nayak, Resident of Ward no.-4, Village-Bhagwatipur, P.S.-Pandaul, District-Madhubani (Bihar).
2. The State of Bihar through the Collector Madhubani, at Collectariate Madhubani
3. The Survey Settlement Officer, Survey Office, Madhubani.
4. The Survey Assistant Settlement Officer, Survey Office, Madhubani.
5. The Anchal Adhikari, Anchal Office, Pandaul, Distt. Madhubani.
6. Ram Swagarath Sah Son of Late Domu Sahu Resident of Ward no.-4, Village-Bhagwatipur, P.S.-Pandaul, District-Madhubani. (Bihar).
7. Raja Sah Son of Ram Swagarath Sah Resident of Ward no.-4, Village-Bhagwatipur, P.S.-Pandaul, District-Madhubani. (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Advocate
For the Respondent/s : Mr. Bimal Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV ORDER

8 13-11-2025 This civil revision application is filed against order dated 25.01.2023 passed in the Title suit no. 13 of 2020, CIS no. 71 of 2020 by the Learned Munsif 1st Madhubani whereby and whereunder permission has been granted to the plaintiff/opposite party to withdraw the said title suit with liberty to file a fresh suit.

2. Heard the Learned Counsel for the petitioner and respondent.



3. Learned counsel for the petitioner submitted that as per provision of Order XXIII Rule (3)(b) of the Code of Civil Procedure, the sufficient ground for granting permission to institute a fresh suit, after withdrawal of the concerned suit, must be mentioned in the impugned order but the learned court below without mentioning the sufficient ground granted permission to the opposite party to institute a fresh suit.

4. He further submitted that the plaintiff had not disclosed in his petition as to which were the omissions/errors in the Plaint, which were beyond the rectification subsequently by the Plaintiff. Moreover, the “Prarupik Truti” is no ground in view of Order 23 Rule 1(3)(b) of the CPC. The word “Prarupik Truti” is a general and a vague word signifying nothing. It cannot be treated as a substitute of the “sufficient ground”, as statutorily mandate under Order 23 Rule 1(3)(b) CPC.

5. He lastly submitted that the impugned order is vexatious fit to be set aside on the point that it is not fulfilling the mandatory rule of Order XXIII of the CPC and it is also in violation of the authoritative pronouncement, made by the Hon'ble Apex Court in the case of ***K.S. Bhoopathy and others v. Kokila and others*** reported in ***2000 (5) SCC 458*** it has been held:



13. *The provision in Order XXIII Rule 1 CPC is an exception to the common law principle of non-suit. Therefore on principle an application by a plaintiff under sub-rule (3) cannot be treated on a par with an application by him in exercise of the absolute liberty given to him under sub-rule (1). In the former it is actually a prayer for concession from the court after satisfying the court regarding existence of the circumstances justifying the grant of such concession. No doubt, the grant of leave envisaged in sub-rule (3) of Rule 1 is at the discretion of the court but such discretion is to be exercised by the court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of sub-rule (3) in which two alternatives are provided; first where the court is satisfied that a suit must fail by reason of some formal defect, and the other where the court is satisfied 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. Clause (b) of sub-rule (3) contains the mandate to the court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action. This becomes all the more important in a case where the application*



under Order XXIII Rule 1 is filed by the plaintiff at the stage of appeal. Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the court or courts below. Grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or even a third party. The appellate/second appellate court should apply its mind to the case with a view to ensure strict compliance with the conditions prescribed in Order XXIII Rule 1(3) CPC for exercise of the discretionary power in permitting the withdrawal of the suit with leave to file a fresh suit on the same cause of action. Yet another reason in support of this view is that withdrawal of a suit at the appellate/second appellate stage results in wastage of public time of courts which is of considerable importance in the present time in view of large accumulation of cases in lower courts and inordinate delay in disposal of the cases.

17. . From the above it appears that the approach of the High Court was that the plaintiff should have prayed for declaration of title which they had omitted to include in the plaint. It was for the plaintiffs to frame their suit in any form as advised. If they felt that there was a cause of action for declaration of their title to the suit property they could have made a prayer in that regard. If they felt that a declaration of their right to exclusive user of the



pathway was necessary they should have framed the suit accordingly. On the other hand the plaintiffs merely sought a decree of injunction permanently restraining the defendants from disturbing their right of user of the property. From the facts and circumstances of the case as emanating from the judgments of the trial court and the first appellate court it is clear that the plaintiffs realised the weakness in the claim of exclusive right of user over the property and in order to get over the findings against them by the first f appellate court they took recourse to Order XXIII Rule 1(3) CPC and filed the application for withdrawal of the suit with leave to file a fresh suit. The High Court does not appear to have considered the relevant aspects of the matter. Its approach appears to have been that since the interest of the defendants can be safeguarded by giving them permission for user of the pathway till adjudication of the controversy in the fresh suit to be filed, 9 permission for withdrawal of the suit as prayed for can be granted. Such an approach is clearly erroneous: It is the duty of the court to feel satisfied that there exist proper grounds/reasons for granting permission for withdrawal of the suit with leave to file fresh suit by the plaintiffs and in such a matter the statutory mandate is not complied with by merely stating that grant of permission will not prejudice the defendants. In case such permission is h granted at the appellate or second appellate stage prejudice to the defendant is writ large as he loses the benefit of the decision in his favour in the lower court.

6. Learned counsel on the behalf of opposite party



submitted that the present civil revision is not maintainable in the eye of law. He further submitted that the proviso of section 115 (1) of CPC states that the High Court shall entertain the revision petition only when the impugned order would have finally disposed of the suit. In para 8 of his written submission he explained that there is technical error of misjoinder and non-joinder of defendants.

7. On perusal of materials available on record and relevant portion of Order 23 Rule 1 of the CPC for withdrawal of the suit, it is evident to note that to withdraw the suit under Order 23 Rule 1 of the CPC with liberty to institute a fresh suit on the same subject matter has to accompany with sufficient cause and reasonable ground. Order XXIII Rule 1(3) CPC lays down following grounds on which a Court may allow withdrawal of suit. It reads as under:

"Rule. 1. Withdrawal of suit or abandonment of part of claim.-

(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. This court is of the opinion that the learned trial Court has erred in allowing the opposite party the liberty to file fresh suit without complying the mandatory provision of Order XIII Rule 1 (3) of CPC. Moreover, the Hon'ble Apex Court in the case of ***K.S. Bhoopathy and others supra*** held that:

14. "In Bakhtawar Singh v. Sada Kaur the question of grant of permission under clause (3) of Order XXIII Rule 1 CPC was considered wherein it was held: (SCC Headnote) "In the present case all the courts below including the High Court concurrently found that the plaintiff-appellants failed to produce any evidence to show that the permission to withdraw the suit was given on the ground that the suit was bound to fail by reason of some formal defect or there were sufficient grounds for allowing the plaintiffs to institute a fresh suit in respect of the same subject-matter. The plaintiffs had not even produced the application which is said to have been filed for withdrawal of the earlier suit with permission to file a fresh suit on the same cause of action to show as to what was the formal defect in the earlier suit by reason of which it was sought to be withdrawn. In these facts and circumstances no case for fresh institution of suit on the same cause of action and for the same relief after the withdrawal of the earlier suit was made out by the plaintiff appellants, in accordance with the provisions of clause (3) of Order 23 Rule of the Code".

9. Further, it is the duty of the court to be



satisfied with the existence of formal “defect” or “sufficient cause” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Further the opposite party has mentioned the technical error in the written submission but had not specified any of them in the application before Learned Trial Court. In the present case the learned trial court did not have any material on the record to satisfy itself about the defect, what exactly was the defect has provided. Merely on mentioning that there is a defect the trial court allowed the withdrawal.

10. So, considering all the materials available on record and in the aforesaid background, this Court, therefore, does find that the learned Trial Court has committed error while disposing off the suit. Accordingly, the Civil Revision is allowed setting aside the impugned order passed by learned Munsif 1st, Madhubani.

(Ramesh Chand Malviya, J)

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