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

CR-5955-2018 (O&M)

Date of Decision : 16.01.2025

Prem Kumar Dheer (deceased) through LRs & Anr ... Petitioner(s)

Versus

Santosh Kumari & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Anupam Mathur, Advocate for respondent Nos.1 to 5.

Mr. Jaivir Singh, Advocate for

Mr. Ashish Rawal, Advocate for respondent No.6.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 16.08.2018 (Annexure P-13) permitting the plaintiff-respondent Nos.1 to 4 to withdraw their suit with liberty to file afresh with better particulars.

2. Learned counsel for the petitioners would contend that the main suit was fixed for hearing on 17.08.2018 and a day prior thereto, the application dated 16.08.2018 seeking permission to withdraw the suit with liberty to file afresh with better particulars was filed. The same was entertained on 16.08.2018 and without even issuing notice to the defendant-petitioners herein the application was allowed and the plaintiff-respondent Nos.1 to 4 were permitted to withdraw their suit with liberty to file afresh with better particulars and the fresh suit was filed that very day. It is further

the contention of the learned counsel for the petitioners that before the plaintiff can be permitted to withdraw the suit with liberty to file afresh, the Court as per Order 23 Rule 3 of CPC has to record its satisfaction as enumerated therein. It is further the contention of the learned counsel that there is not a word regarding the Court being satisfied that the case must fail for the reasons stated in Order 23 Rule 3 of CPC.

3. *Per contra* the learned counsel for respondent Nos.1 to 5 would contend that in the written statement the defendant-petitioners herein had referred to a Will of their father dated 05.06.1987 on the basis of which 50% share of the property was transferred in their names and, hence, it was necessary to challenge the said Will and therefore the application for withdrawal of the suit with liberty to file afresh with better particulars.

4. I have heard the learned counsel for the parties.

5. Order 23 Rule 3 of CPC reads as under :

“(1) xxx xxx xxx

(2) xxx xxx xxx

(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.”

6. In the present case, strangely though the case was listed on

17.08.2018, the application for withdrawal of the suit with liberty to file afresh with better particulars was filed a day prior thereto i.e. 16.08.2018. The Trial Court not only entertained the application but went further and without calling upon the other side allowed the application and permitted the suit to be withdrawn with liberty to file afresh with better particulars. A perusal of the impugned order further reveals that there is no reasoning whatsoever nor any satisfaction which had been recorded by the Trial Court before permitting the suit to be withdrawn with liberty to file afresh with better particulars.

7. It is trite that the Trial Court has the power under Order 23 Rule 3 of CPC to permit the plaintiff to withdraw his suit with liberty to file fresh with better particulars but only in consonance with the provisions of law as laid down in Order 23 Rule 3 of CPC.

8. Without calling upon the defendant-petitioners and without recording any satisfaction, the impugned order cannot be sustained in law and the same is, accordingly, set aside. The suit is restored to its original number. Needless to say, the Trial Court shall decide the application dated 16.08.2018 for withdrawal of the suit afresh, in accordance with law. The parties to appear before the Court concerned on **06.02.2025** at 10.00 am.

9. Disposed off accordingly. Pending applications, if any, also stand disposed off.

16.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO