

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****CR-1636-2025 (O&M)****Date of decision: 26.05.2025****Shree Krishan Gopal Gaushala Uplana
Tehsil Assandh District Karnal****...Petitioner(s)****Vs.****The Kurukshetra Gaushala Society
Kaithal and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Saket Bhandari, Advocate
for the petitioner.***********NIDHI GUPTA, J.****CM-6908-CII-2025**

This is an application under Section 151 CPC for placing on record copy of amended plaint, copy of 1st application under Order 23 Rule 1, copy of reply to 2nd application under Order 23 Rule 1 by respondent No.2 as Annexures P-6 to P-8 respectively.

2. Heard.

3. Application is allowed, and the above said documents are taken on record as Annexures P-6 to P-8 respectively, subject to all just exceptions. Registry is directed to tag the same at appropriate place.

CM-10854-CII-2025

This is an application under Section 151 CPC for placing on



record copies of zimni orders of proceedings before the learned trial Court as Annexure P-9 (Colly.).

2. Heard.

3. Application is allowed and copies of zimni orders are taken on record as Annexure P-9 (Colly.), subject to all just exceptions. Registry is directed to tag the same at appropriate place.

CR-1636-2025 (O&M)

The present civil revision petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India against the Impugned Order dated 14.02.2025 (Annexure P-5) passed by learned Civil Judge (Junior Division) Assandh, whereby the application (Annexure P-3) filed by the petitioner for withdrawal of the suit under Order 23 Rule 1 CPC has been rejected.

2. Learned counsel for the petitioner vehemently submits that the petitioner is well within its rights to withdraw the Suit filed by the petitioner. It is submitted that the present application under Order 23 Rule 1 CPC (Annexure P-3) was moved by the petitioner on the ground that petitioner had discovered that mandatory notice under section 80 CPC had not been issued to the respondent defendant. It is submitted that suit of the petitioner is likely to be rejected because of this technical defect. It is for this reason only that the petitioner sought to withdraw the present suit with liberty to file afresh on same cause of action. However, the said application filed by the petitioner was dismissed by



the learned Civil Judge (Junior Division) Assandh vide impugned order dated 14.02.2025 (Annexure P-5).

3. Learned counsel submits that from a bare reading of Order 23 Rule 1 of CPC, it is clear that when the suit would fail due to some formal defect and an application has been filed by the party for withdrawal of the suit with liberty to file fresh suit, the Court may grant leave to the plaintiff to withdraw the suit with the liberty aforesaid. The non-service of notice under Section 80 CPC is a formal defect and the trial Court adopted a lackadaisical approach and did not consider the fact that since non-serving of notice was a formal defect the permission to withdraw the suit with liberty aforesaid ought to have been allowed. Learned counsel submits that therefore, the impugned order dated 14.02.2025 (Annexure P-5) is illegal, unjust, harsh and against the settled principles of law.

4. In support, learned counsel relies upon the judgment of the Hon'ble Supreme Court in "***V. Rajendran and another vs. Annasamy Pandian (D) through LRs Karthyayani Natchiar,***" ***Law Finder Doc Id # 825314***; wherein it is held that:

"A. Civil Procedure Code, 1908, Order 23, Rule 1 (3)- Withdrawal of suit to file fresh suit on same cause of action Permission granted to plaintiff to withdraw the suit even when witnesses were examined on both the sides and suit was posted for judgment.

B. Civil Procedure Code, 1908, Order 23, Rule 1 (3) - Withdrawal of suit - As per Order 23. Rule 1 (3) of C.P.C. Suit may only be withdrawn with permission to bring a fresh suit



when the Court is satisfied that the suit must fail for reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit :-

1. "Formal defect" is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc.

2. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause(b) should be read independent of the words a formal defect' and clause (a)."

5. It is accordingly prayed that in view of the factual and legal position stated above, the impugned order deserves to be set aside.

5. No other argument is made by Id. counsel for the petitioner.

6. Heard learned counsel and perused the case file in great detail.

7. I find no merit in the submissions made on behalf of the petitioner. Present case has a chequered history. Brief facts are that on dated 23.01.2017, the petitioner had filed present Civil Suit for declaration, with consequential relief of permanent injunction (Annexure P-1). In the suit, the petitioner had first filed an application for amendment of plaint on 01.10.2021, which was allowed; in pursuance to which, the petitioner had filed amended plaint on 11.03.2022 (Annexure P-6). Thereafter, the petitioner had filed the first application dated



12.04.2024 under Order 23 Rule 1 CPC (Annexure P-7) for withdrawal of the suit on the ground that *“relief of correction of revenue entries in the name of the plaintiff has not been sought, which is formal defect and because of the fact, the present suit may be failed on this technical ground.”* Therefore, in the first application, it was pleaded that the petitioner had not sought the relief of correction of revenue record which was wrongly entered in the name of the defendant by the revenue authorities and hence, there are likely chances of failing of the Suit on the above ground.

8. The said application of the petitioner was dismissed by the learned trial Court vide order dated 11.10.2024 (Annexure P-2) for the following reasons: -

“11. No doubt, the Court can allow the application for withdrawal of the suit with liberty to bring a fresh suit when it is satisfied that the suit must fail for reason of some formal defects or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit and in the case in hand, the specific stand of the plaintiff is that they could not seek the relief of correction of revenue record wrongly entered in the name of the defendant no.1 but the perusal of the relief clause of the plaint reveals that the plaintiff has prayed that a decree for declaration that the revenue entries showing the name of defendant no.1 in the ownership and khana khast column of jamabandies on the basis of alleged gift deed and alleged mutation be declared as illegal, null and void ab-initio, nonest, inefficitive, inoperative, in contravention of law and not binding upon the right of the plaintiff in any manner and further a decree for mandatory injunction thereby



directing the defendant no.2 to correct the revenue record of the land as mentioned in para no.4 of the plaint in the name of the plaintiff and further a decree for permanent injunction restraining the defendant no.1 from dispossessing the plaintiff from the suit land as mentioned in para no.4 of the plaint and from interfering in the peaceful possession of the plaintiff and from cultivating the suit land by the plaintiff for ever may kindly be passed in favour of the plaintiff and against the defendant, in the interest of justice. Meaning thereby the plaintiff has already sought the relief of correction of khasra girdawari. Further, perusal of the file reveals that vide order dated 1.10.2021, the plaintiff was given the permission to amend the plaint whereby para no.4(a) to 4(f) were incorporated but the amended plaint filed by the plaintiff does not reflect the permitted amendments and now when the case is at the stage of the rebuttal evidence, the instant application has been moved stating that the plaintiff could not seek the relief of correction of revenue record citing the same to be a formal/technical defect. However, as discussed above, the perusal of the plaint reveals that plaintiff has already sought the said relief. Meaning thereby, the application in hand has no merits and is hereby dismissed. Nothing expressed herein above shall be expression of my opinion upon the merits of the case.”

9. Now, on 22.11.2024, petitioner has filed the present/second application under Order 23 Rule 1 CPC (Annexure P-3). In this round, the petitioner has sought withdrawal of the suit on the ground that: -

“..... while filing the suit, the previous counsel had not served a notice as required under Section 80 C.P.C. upon the defendant no.2 nor he sought the permission for dispensing with the notice as required under Section 80(2) C.P.C.



Although, the present applicant has moved earlier application under Order 23, Rule 1 C.P.C. but at the time of filing the said application, this fact was not in the knowledge of the present counsel of the plaintiff and he had moved the application under Order 23, Rule 1 C.P.C. on some other ground, which was dismissed by this Hon'ble Court vide its order dated 11.10.2024. It is pertinent to mention here that the serving of a notice under Section 80 C.P.C. is mandatory one and if the notice is not served, then the permission for dispensing with the said notice is must but in the present case, earlier counsel neither served a notice as required under Section 80 C.P.C. nor sought the permission for dispensing with the notice as required under Section 80(2) C.P.C. and suit has been filed pre-maturely which is going to fail because of this technical reason, as such, present application is necessitated."
(Emphasis added)

10. Thus, petitioner has sought withdrawal of the suit on the ground that: a) the previous counsel had not served the mandatory notice under section 80 CPC; and b) that the said fact was not in the knowledge of the present counsel for the petitioner. However, the falsity of the above averments is writ large on the record of the case.

11. It has been contended by the petitioner that formal notice under Section 80 CPC could not be served upon the defendant as there was change in counsel. Resultantly, vide order dated 24.4.2025 this Court had directed learned counsel for the petitioner to place on record the zimni orders passed by the learned trial Court w.e.f. 15.02.2017 to 19.02.2021 to satisfy itself regarding the date of change of counsel. Perusal of zimni order dated 19.02.2021 (Annexure P-9 colly), reveals



that present counsel for the petitioner had first put in appearance before the learned trial Court on 19.02.2021; whereafter petitioner had filed the application for amendment of plaint on 01.10.2021; which was allowed, whereupon the petitioner had filed amended plaint on 11.03.2022 (Annexure P-6). In the amended plaint (Annexure P-6), the petitioner has clearly stated *“that the plaintiff is filing the above titled suit against the defendant no.2 who is Govt. Officer. Prior to filing the present suit, a notice under Section 80 C.P.C. is mandatory, which takes 60 days to be served upon the defendant no.2. The very purpose for filing the present suit will be failed if the notice under Section 80 C.P.C. is to be served upon the defendant no.2. It is pertinent to mention here that the plaintiff filed an application for correction of Khasra Girdawari before the defendant no.2 but the defendant no.2 has not given claimed relief, which was sought in the said application, so, the said application be treated as notice under Section 80 C.P.C. The present suit is being filed being urgent nature before this Hon'ble Court.”* (Emphasis added)

12. From the above, it is clear that at the time of filing amended plaint on 11.3.2022, the *present* counsel for the petitioner was very much aware of the fact that the mandatory notice under Section 80 CPC had not been served. Despite this, in the first application filed by the petitioner on 12.04.2024 under Order 23 Rule 1 CPC (Annexure P-7) withdrawal of suit is sought on spurious grounds; and there is no mention of non-serving of the notice under section 80 CPC. After dismissal of the said application on 11.10.2024, the present/second



application for withdrawal of suit, under Order 23 Rule 1 CPC (Annexure P-3) has been filed on 22.11.2024. Clearly therefore, the grounds on which the petitioner is seeking withdrawal of the suit - that notice under Section 80 CPC could not be served upon the defendant as there was change in counsel - is not made out as, present counsel had put in appearance as far back as on 19.02.2021, as evident from zimni order dated 19.02.2021 (Annexure P-9 Colly).

13. Further, petitioner cannot derive benefit from the relied-upon judgment in **V. Rajendran supra**, as, no doubt, withdrawal of suit for removal of formal defect is permissible. However, in the peculiar facts and circumstances of the present case as enumerated here in above, the same cannot be permitted. The provisions of law, being the handmaids of Justice, cannot be misused for self-serving purposes. From the facts and sequence of events as narrated above, the only irresistible conclusion that can be drawn is that the petitioner is merely using these applications as a ploy to delay the trial.

14. In view of the above, no ground is made out to interfere in the impugned order dated 14.02.2025 (Annexure P-5). The present civil revision petition, accordingly, stands **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

26.05.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No