

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

168

CR-2811-2026**Date of decision : 06.04.2026****Renu and others****..... Petitioners****versus****Nisha****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sunil K.S. Panwar, Senior Advocate with
Mr. Mohit Rana, Advocate
Mr. Dhru Singh Panwar, Advocate and
Ms. Tejaswini, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against the order dated 07.01.2026 passed by Additional Civil Judge (Sr. Divn.), Bhiwani whereby an application filed by the plaintiff seeking withdrawal of the suit with permission to file fresh suit by incorporating challenge to the earlier transaction has been allowed.

2. Plaintiff filed suit seeking decree of declaration to the effect that she is the sole owner in possession of the agricultural land as detailed out in the headnote of the plaint and challenged gift deed (Hibbanama), i.e. document bearing No.1617 dated 05.10.2016.

3. At the stage when the defendants were to file written statement, present application was moved seeking permission to withdraw the suit with liberty to file a fresh one. By way of impugned order, the Trial Court allowed the plaintiff to withdraw the suit granting liberty to file fresh one.



4. Learned senior counsel appearing for the petitioners has assailed the order passed by the Trial Court. He submits that prior to the gift deed, there was a decree passed by the Lok Adalat based upon the admission of the present plaintiff. Despite being in the knowledge of the said decree, plaintiff abandoned her right to challenge the same. Thus, the subsequent suit would be barred under Order II Rule 2 CPC. However, the Court failed to take cognizance of the said fact and illegally allowed the plaintiff to withdraw the suit. He further submits that the permission granted is beyond the scope of jurisdiction vested with the Court under Order XXIII Rule 1(3) CPC as permission to file a fresh suit cannot be granted when the same has an effect of enlarging the scope of the *lis*.

5. I have heard Ld. senior counsel for the petitioners and have carefully gone through the records of the case.

6. The present suit was instituted by the plaintiff seeking declaration to the effect that she is sole owner in possession of the agricultural land as detailed out in the headnote of the plaint. She further sought decree of declaration to the effect that the gift deed bearing No. 1617 dated 05.10.2016 is not binding qua her rights. The dispute is between the members of family. From the records, it is discernible that Bihari Lal left behind three sons namely Manoj Kumar, Ravinder Kumar and Parkash Chand. Plaintiff is wife of Manoj Kumar. Defendant No.1 happens to be wife of Ravinder Kumar. Defendant No.3 is wife of Parkash Chand. Plaintiff claims that defendant No.1 and 3 got her signatures on certain documents on the pretext of getting the land partitioned. Instead of executing partition deed, defendant No.1 and 3



got gift deed executed in their favour.

7. Before the defendants filed written statement, plaintiff filed present application seeking withdrawal of suit on the ground that the same was filed in undue haste and challenge to decree dated 24.08.2013 passed in Civil Suit No. 159 could not be incorporated inadvertently. The Trial Court allowed the application vide impugned order observing as under:-

“Arguments on the application to withdraw the suit with the permission to file the afresh heard. As the case is at initial stage and plaintiff need to challenge some more transaction which may be eclipsing her rights, therefore, application in hand stand allowed and present suit is hereby dismissed as withdrawn and permission granted to file afresh. File be consigned to record room after due compliance.”

8. In order to appreciate the contention raised by senior counsel for the petitioner, it will be up to peruse Order XXIII, CPC which reads as under:-

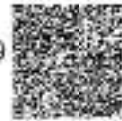
“WITHDRAWAL AND ADJUSTMENT OF SUITS

¹[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 plaintiffs.]”

9. In the considered opinion of this Court, the application filed by the respondent seeking withdrawal of the suit would fall within the ambit of Order XXIII Rule 1(3)(b) CPC. Subject matter of the suit remains the same. The suit being at an initial stage, the Trial Court rightly granted liberty to the plaintiff to withdraw the suit and institute a fresh one in respect of suit property by incorporating challenge to the decree. The plea raised by senior counsel with respect to the subsequent suit being barred under Order II Rule 2 CPC for the plaintiff having abandoned to challenge the decree in the earlier suit, cannot be looked at the stage of withdrawal of this suit.



10. Finding no merits in the present revision petition, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

06.04.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No