

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-492-2019 (O&M)****Date of Decision : 10.03.2026**

Gurcharanjit Singh

... Petitioner

Versus

Amarjit Kaur and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Chahal, Advocate for the petitioner.

Respondent No.1 proceeded against *ex parte*
vide order dated 21.02.2023.**ALKA SARIN, J. (Oral)**

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 23.07.2018 whereby the application filed by plaintiff-respondent No.1 for withdrawal of the suit with permission to file afresh has been allowed.

2. Briefly the facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration that she is owner in possession to the extent of half share out of the estate of her father Ishar Singh and mother Balvir Kaur and was also entitled to 1/10 share out of the land of her grandfather, namely, Attar Singh and 1/40 share out of the share of her grandmother Jarnail Kaur as fully described in the plaint. The said suit was filed on 29.07.2015. Written statement was filed by defendant No.1-petitioner herein. During the pendency of the suit, admittedly, defendant No.1-petitioner herein executed a transfer deed/*Tabdil Malkiatnama* in favour of his sons (who

are proposed defendant Nos.7 and 8) on 03.03.2017. The plaintiff-respondent No.1 at the first instance filed an application for amendment as also for impleading the sons of the defendant No.1-petitioner herein as defendant Nos.7 and 8 and also to challenge the transfer deed executed by defendant No.1-petitioner in favour of his sons. The said application was hotly contested by defendant No.1-petitioner and vide order dated 17.04.2018 the said application stood dismissed. Thereafter, plaintiff-respondent No.1 filed an application to withdraw the suit with permission to file a fresh suit on same cause of action, which has been allowed vide the impugned order. Aggrieved by the same, the present revision petition has been filed.

3. Notice of motion was issued however despite service none has put in appearance on behalf of the plaintiff-respondent No.1.

4. Learned counsel for the defendant No.1-petitioner would contend that it was not a formal defect as has been stated in the application for withdrawal of the suit. It has further been contended that once the application for amendment has been dismissed, the plaintiff-respondent No.1 could not have been allowed to withdraw the suit with permission to file afresh.

5. Heard.

6. Order XXIII Rules 1 and 3 of the Code of Civil Procedure, 1908 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) xx xx xx xx xx

(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.”*

7. The Trial Court while allowing the application held that sufficient reasons have been shown for withdrawal of the suit with liberty to file afresh as defendant No.1-petitioner herein had transferred some of the suit land *lis pendens* in favour of his sons vide transfer deed dated 03.03.2017 and the sons of the defendant No.1-petitioner are now necessary parties. The evidence of the plaintiff-respondent No.1 is yet to begin.

8. Hon’ble Supreme Court in the case of **V. Rajendran and Anr. Vs. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar [2017 (1) RCR (Civil) 887]** has held as under :

“9. *Order XXIII Rule 1(3) CPC lays down following grounds on which a Court may allow withdrawal of suit. It reads as under:*

R.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.*

As per Order XXIII Rule 1(3) CPC, 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. The power to allow withdrawal of a suit is discretionary. In the application, the plaintiff must make out a case in terms of Order XXIII Rule 1 (3) (a) or (b) CPC and must ask for leave. The Court can allow the application filed under Order XXIII Rule 1 (3) CPC for withdrawal of the suit with liberty to bring a fresh suit only if the condition in either of the clauses (a) or (b) that is, existence of a “formal defect” or “sufficient grounds”. The principle under Order XXIII Rule 1 (3) CPC is founded on public policy to prevent institution of suit again and again on the same cause of action.

10. *In K.S. Bhoopathy and Ors. vs. Kokila and Ors. (2000) 5 SCC 458, it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient*

grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient grounds”, such right cannot be considered to be so absolute as to permit or encourage abuse of process of Court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order XXIII Rule 1(3) CPC, the Court must be satisfied about the “formal defect” or “sufficient grounds”. “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. “Formal defect” must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. 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). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with “formal defect” envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is “sufficient grounds”.

9. Learned counsel for the defendant No.1-petitioner has not been able to show any right which has been vested in the defendant No.1-petitioner. In view of the fact that sufficient ground has been made out for withdrawing the suit with permission to file afresh keeping in view that the defendant No.1-petitioner herein had transferred some of the suit land in favour of his sons *lis pendens* and the application for amendment was dismissed, no fault can be found with the impugned order.

10. In view of the above, the present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.03.2026
jk

(ALKA SARIN)
JUDGE

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