

(1999) 08 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 4222 of 1998

Jagdev Singh Grewal

APPELLANT

Vs

Gurbir Singh and Others

RESPONDENT

Date of Decision: Aug. 6, 1999**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 1, Order 23 Rule 3

Citation: (1999) 3 CivCC 667 : (1999) 123 PLR 714 : (1999) 4 RCR(Civil) 77**Hon'ble Judges:** Amar Dutt, J**Bench:** Single Bench**Advocate:** Ashok Aggarwal and Alok Jain, for the Appellant; Ranjan Lakhanpal and R.K. Rathore for Respondent No. 1, R.N. Raina, for Respondent Nos. 7 to 8, M.L. Saggar, for Respondent Nos. 2 to 5 and K.C. Bhatia and Arun Palli, for the Respondent**Final Decision:** Dismissed

Judgement

Amar Dutt, J.

This revision is directed against the order dated 3.8.1998 passed by the Additional Civil Judge, Senior Division, Jalandhar dismissing the application filed by the petitioner Jagdev Singh Grewal, who was plaintiff No. 3, before the trial Court to withdraw the suit.

2. Briefly stated the facts, necessary for deciding the issues involved in this petition are that plaintiff No. 1. Guru Nanak Education Trust (Regd.) Model Town, Ludhiana (for short the Trust") was registered vide Trust Deed dated 1.6.1969. Originally there were seven Trustees and the Trust Deed contemplated appointment of more trustees. In the year 1993 Gurbir Singh, plaintiff No. 2 and the present applicant Jagdev Singh Grewal, Plaintiff No. 3 were the President and Secretary respectively of the Trust. In a meeting held on 9.4.1993, it was resolved that the President, Vice President and Secretary will operate the bank account by signing any two of them jointly. A dispute arose between the parties in July/August, 1993 as a consequence

whereof on 7.9.1993 the Trustees of the Board held separate meetings at Chandigarh and Ludhiana. The meeting at Chandigarh was attended by the President and Secretary and one Baldev Singh while Shri Attar Singh was represented by proxy. The meeting at Ludhiana was attended by three persons namely defendant Nos. 1, 2 and 3 and in the meeting they decided to appoint themselves as President, Vice President and Secretary respectively and also to operate the bank account of the Trust. This action of theirs was challenged by the Trust through the President and the Secretary as well as by the Gurbir Singh and Jagdev Singh Grewal in their individual capacities by filing a suit for declaration that the meeting held at Ludhiana was illegal. They had also sought an ad interim injunction restraining the defendant/respondents from giving effect to the resolution passed in that meeting. This application was allowed by the Trial Court which order was upset by the Additional District Judge. The Civil Revision filed against this decision was allowed and the order of this Court was upheld by the Hon"ble Supreme Court.

3. On 27.5.1998 Jagdev Singh Grewal, who was plaintiff No. 3, filed an application under Order XXIII, Rule 1 read with Section 151 CPC bringing it to the notice of the Court that on 8.5.1998, the officer-bearers had issued an agenda for election of officer-bearers of the Trust on 15.5.1998 at 10.00 a.m. at the premises of Guru Nanak Girls College, Model Town, Ludhiana. In the meeting Gurinder Singh Grewal was elected as President, Jagdev Singh Grewal was elected as Secretary and Balbir Singh was elected as Vice President and in view of this election the Guru Nanak Education Trust, Plaintiff No. 1 and Plaintiff No. 3 who is the present applicant did not want to pursue the suit and prayed that it should be dismissed and they should be permitted to withdraw the same.

4. This application was contested by plaintiff No. 2 on the ground that the same was not maintainable without his consent. It was also submitted that for the meeting which is alleged to have been held on 15.5.1998 there was no agenda for the removal of the plaintiff from the Presidentship of the Trust and consequently he continues to hold that office. In view of this, it was not open for plaintiff No. 1 to withdraw and abandon the suit qua the Trust and the suit can at best be withdrawn qua the personal capacity of plaintiff No. 3. It was also submitted that the agenda which is alleged to have been issued on 8.5.1998 did not conform to the mandatory requirement of 15 days notice that was required to be given and, therefore, neither the matter of election of the President nor any matter regarding the removal of plaintiff Nos. 2 and 3 from the office of President and Secretary could be taken up in the meeting. It was also asserted that the alleged meeting was void and had been held in a mala fide manner in violation of the stay order which had been granted in favour of the plaintiffs. Needless to say that application for withdrawal had been supported by defendant Nos. 1 to 4. After hearing the arguments and perusing the material placed before him, the trial Court was of the view that in view of the provisions of Order 23 Rule 1 (5) no permission could be granted to the petitioner to

withdraw the suit on his behalf as well as on behalf of plaintiff No. 1 because the application for withdrawal was being contested by the plaintiffs. This order has occasioned the filing of the present petition.

5. I have heard Shri Ashok Aggarwal, Senior Advocate with Shri Alok Jain, Advocate for the petitioners and Shri Ranjan Lakhanpal and Mr. R.K. Rathore, Advocates for respondent No. 1, Shri M.L Sagar, Advocate for respondent Nos. 2 to 5. Shri R.N. Raina, Advocate for respondent Nos. 7 and 8 and Shri K.C. Bhatia and Shri Arun Palli, Advocates for respondent No. 9 and have carefully considered the respective submissions made by them.

6. On behalf of the petitioner it was submitted that the trial Court ought to have allowed the application filed by him for withdrawal of the suit and rejected the objections taken by respondent No. 1 who was plaintiff No. 2 before the trial court with regard to the maintainability of the application under Order XXIII Rule 1 C.P.C. It was also submitted that in any case, the Court below erred in law while dismissing the application by making observations to the effect:

" The meeting dated 15.5.1998 held in violation of condition as per order dated 18.4.1995 for the removing and appointment of office-holder of plaintiff Trust and in view of [Delhi Development Authority Vs. Skiper Construction Company \(P\) Ltd. and another](#), , the contemner cannot be deemed to reap the fruit of his own violation and wrongs."

Inasmuch as it commented upon an issue which it was not required to deal with while disposing of the application under Order XXIII Rule 1 C.P.C. and, therefore, the impugned order cannot be sustained.

7. On behalf of the respondent No. 1 it was submitted that provisions of Order XXIII CPC clearly indicate that rights of the plaintiff to file an application to withdraw the suit is absolute only in cases where only one person has filed the suit. In a case where more than one persons have joined in filing of the suit, it has to be exercised within the parameters laid down in Sub-rule 5 of Rule 1 and as this requirement was not met the application has rightly been dismissed.

8. The present suit had been filed on behalf of the Trust by Gurbir Singh and Jagdev Singh Grewal as President and Secretary of the Trust as also in their individual capacities to challenge the legality of the meeting which had been held at Ludhiana on 9.4.1993 and for an injunction restraining the defendants from giving effect to the resolution passed in that meeting. It appears that on 15.5.1998 some office-bearers of the Trust had held another meeting in which Gurinder Singh Grewal was elected as President and Jagdev Singh Grewal was elected as Secretary and Balbir Singh was elected as Vice President. In consequence of this election, Jagdev Singh Grewal who had filed a suit as co-plaintiff with Gurbir Singh filed an application for permission to withdraw the suit because according to him as a consequence of the fresh election the dispute which had been raised therein

between the parties stood resolved. This application was not consented to by Gurbir Singh who opposed the withdrawal of the suit and consequently the Civil Judge was called upon to go into the question whether in a case where there were more than one plaintiffs the suit could be withdrawn on the asking of one of them even if others did not give their consent to the withdrawal. Since on merits the withdrawal was being opposed as a mala fide attempt on the part of the co-plaintiff to circumvent the condition of the order dated 18.4.1995 for removal and appointment of office holders of the Trust, this factor appears to have been commented upon by the Court below while disposing of the legal objection regarding the maintainability of such an application without the consent of the co-plaintiff. Order XXIII Rule 1 C.P.C. under which provision the application had been filed reads as under:

"(1) At any time after the institution of a suit, the plaintiff may, as against all or any of the defendant 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 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 to 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 claim subject matter of such suit or such part of the claim.

(3) x x x x x

(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

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."

A perusal thereof indicates that the right of the plaintiff to withdraw the suit is unfettered except in relation to cases where the plaintiff is minor and in cases where more than one plaintiffs have joined in the filing of the suit. The provisions of Sub-rule (5) require the Court to ensure that the application is not allowed without the consent of other plaintiffs.

9. In the present case, as the suit had been filed by the Trust through its President and Secretary and Gurbir Singh and Jagdev Singh Grewal in their individual capacities, the Court could not have allowed the application filed by Jagdev Singh Grewal without the consent of his co-plaintiff Gurbir Singh Grewal who in fact had opposed the withdrawal of the suit. This view of mine finds support from the observations contained in Pankaj Kumar v. Sarangdhar Prasad Singh AIR 1989 N.O.C. 108 Patna; Dangar Bharmal Hadhu v. Soni Devkaran Raghavji AIR 1953 Kut 35 and [Bangaru Pattabhirmayya and Others Vs. Bangaru Gopalakrishnayya and Others, .](#)

10. The second objection relates to the comments which have been made by the trial Court regarding the motive of the appellant for filing the application for withdrawal of the suit to the effect that contemner "cannot be deemed to reap the fruit of his own violation and wrongs". These observations in my opinion should have been avoided as the Court was not while deciding the application under Order XXIII Rule 1 C.P.C. called upon to deal with the question about the manner in which the meeting had been conducted on 15.5.1998 or the reasons for holding the same. Nor was it necessary for it to determine while disposing of the application whether the meeting was an abuse of the process of law and had been conducted in contravention of any direction issued by any competent Court. This question, the Court below will be at liberty to decide as and when the same is raised by the parties by moving an appropriate application in this regard.

For the reasons recorded above, this petition fails and is accordingly dismissed.