

(1998) 05 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1771 of 1991

Pritam Singh and Others

APPELLANT

Vs

Bachan Singh and Others

RESPONDENT

Date of Decision: May 1, 1998

Acts Referred:

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

Citation: (1998) 3 CivCC 599 : (1999) 121 PLR 137 : (1998) 3 RCR(Civil) 344

Hon'ble Judges: G.C. Garg, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Jasbir Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.C. Garg, J.

Respondents herein filed a suit for declaration that they are owners in possession of the suit land as co-sharers. It seems that the defendants took a stand that the plaintiffs are not in possession of any part of the suit land and in fact they (defendants) are in possession thereof. The plaintiffs perhaps produced their entire evidence and at that stage they entertained a feeling that the suit may fail on account of a technical ground, namely, that a suit for mere declaration is not maintainable in view of the defence taken by the defendants. They consequently moved an application under Order 23 Rule 1 (3) of the CPC seeking permission to withdraw the suit with permission to file a fresh one on the same cause of action. According to the plaintiffs, the suit was likely to fail on account of technical ground, namely, that the relief of possession had not been asked for. The application was opposed by the defendants. It was stated that there is no technical or formal defect in the suit and the plaintiffs want to withdraw the suit only on the ground that they have not been able to lead evidence in support of their claim.

2. The trial court on a consideration of the entire matter, allowed the application by order dated 19.4.1991 subject to payment of Rs. 300/- as costs and the suit was dismissed as withdrawn with liberty to the plaintiffs to file a fresh one on the same cause of action. Hence this revision at the instance of the defendants.

3. Learned counsel for the petitioners submitted that there was no technical or formal defect in the suit and in the absence of such a finding, the plaintiffs could not be permitted to withdraw the suit with permission to file a fresh one on the same cause of action. Learned counsel also submitted that even if the relief of possession had not been asked for, the plaintiffs could very well seek amendment of the plaint and claim the relief of possession but the suit could not be permitted to be withdrawn with liberty to file a fresh one on the same cause of action.

4. After hearing learned counsel for the parties, I am of the opinion that the contention of the learned counsel has no merit. This court in *Kanhiya Lal and Anr. v. Nathu and Ors.* 1989 96 P.L.R. 449 held that the provisions of Order 6 Rule 17 of the Code have to be read as not to make Order 23 Rule 1 redundant, If the sweeping contention of the petitioners to the effect that where a suit can be amended, the permission to withdraw the suit cannot be granted, is accepted, it would render Order 23 Rule 1 of the CPC obsolete. The court has jurisdiction to grant permission to withdraw the suit with liberty to file a fresh one on the same cause of action where it is satisfied that the formal defect pointed out by the parties may result in dismissal of the suit. It was further held that the court can also grant permission to withdraw the suit for other sufficient grounds where justice and equity demand. In the reported case, the plaintiffs had filed a suit for mandatory injunction based on title. The defendants contended that the suit for injunction and declaration simplicitor was not maintainable as they are not in possession of the premises. Since the relief of possession had not been claimed, the application was moved to withdraw the suit with liberty to file a fresh one on the same cause of action. The permission was granted.

5. The facts in the case in hand are precisely the same as in the reported] case. The petitioners as already noticed only filed a suit for declaration and did not claim possession. They sought permission to withdraw the suit in order to claim the relief of possession which was granted. No injustice or prejudice has resulted to the petitioners by the impugned order. In that view of the matter, the revision petition has no merit and the same is consequently dismissed. There shall, however, be no order as to costs.