

(2001) 12 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2012 of 1981

Balbir Singh and
Others

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Dec. 21, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 1(1), Order 23 Rule 1(2), Order 23 Rule 1(3), Order 9 Rule 9
- Land Acquisition Act, 1894 - Section 18

Citation: (2002) 4 RCR(Civil) 697

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: J.S. Malik, for the Appellant; J.P. Dhull, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This judgment shall dispose of Civil Revision Nos. 2012 and 2013 of 1981, as both the revisions are directed against the common order passed by the learned Additional District Judge, Karnal on 23.4.1981.

2. The facts unfolded in the pleadings of the parties are that the revision petitioners, who were minors, had filed a reference u/s 18 of the Land Acquisition Act, 1894 (for brevity, the Act) seeking enhancement of compensation in respect of their land through their next friend Daya Chand, in which Daya Chand and his three major sons were also interested. On the statement made by the counsel for the petitioners dismissed the reference with costs under Order 9, Rule 8 CPC because it was pleaded by their counsel that he had no instructions from them and that he did not have any money to pay the costs imposed on the claimants on the previous date of

hearing. Thereafter, an application was filed by Daya Chand and others including the present petitioners on 17.10.1978 under Order 9, Rule 9, CPC praying for setting aside the order dated 23.9.1978 and restoration of the reference u/s 18 of the Act. This application was dismissed on 18.5.1979 on the statement of the learned counsel for all the claimants who appeared before the learned Additional District Judge that he did not wish to press the application. The statement of the learned counsel was thumb marked by Daya Chand.

3. Thereafter, Balbir Singh and Sukhbir Singh petitioners in Civil Revision No. 2012 of 1981 and Balwan Singh and Angrez Singh petitioners in Civil Revision No. 2013 of 1981 filed applications for setting aside the order dated 18.5.1979 and requested for restoration of the application filed under Order 9, Rule 9 CPC. All the petitioner by now have become major, the learned Additional District Judge, Karnal dismissed their applications with a common order in the following words:-

"The question to be decided in this case, however, is as to whether the learned Additional District Judge, Karnal, was bound to comply with the provisions of Order 23 Rules 1(1) and (2) CPC before he passed the order of dismissal of the application under Order 9 Rule 9 CPC. on the basis of the statement made by the counsel for Daya Chand and others. In my considered opinion while withdrawing the application under order 9 Rule 9 CPC, the counsel for Daya Chand etc., was not abandoning any suit or claim of the minor petitioners. Before dismissing the application under order 9 Rule 9 CPC, the learned Additional District Judge, Karnal was not bound to comply with the provisions of Order 23 Rules 1(1) and (2) CPC. In this view of the matter, it is apparent that there is no illegality in the impugned order dated 18.5.1979. It thus could not be legitimately argued that the petitioners who were minors at that time had suffered on account of any wrong act of the Court. The present petitions for the restoration of the application under Order 9 Rule 9 CPC and for setting aside the impugned order dated 18.5.1979 are not maintainable on the alleged plea that the court was bound to comply with the provisions of Order 23 Rule 1(1) and (2) CPC before dismissing that application as withdrawn.

It was also pleaded in the petitions that Daya Chand, the next friend of the petitioners was grossly negligent in prosecuting the application under Order 9 Rule 9 C.P.C. Even it for the sake of argument, it is conceded that Daya Chand was negligent in prosecuting that application which he had moved of his own behalf as well as on behalf of his sons (major and minors), even then that does not mean that the application under Order 9 Rule 9 C.P.C. is liable to be restored."

4. For setting aside the impugned order dated 18.5.1979 two grounds taken on behalf of the petitioners were that there was a duty caste on the Court under Order 23, Sub-rules (1) to (3) of Rule 1 C.P.C. to safeguard the interest of the minors which has been completely ignored and (b) the next friend-Daya Chand was grossly negligent in prosecuting the application on their behalf filed under Order 9, Rule 9 C.P.C.

5. The learned Additional District Judge repelled both these contentions by observing with regard to the first that the provisions of Order 23, Rules 1(1) and (2) C.P.C. are not attracted and with regard to the second that Daya Chand even if considered negligent, the relief cannot be granted for restoration under Order 9, Rule 9, C.P.C.

6. I have heard Mr. J.S. Malik, learned counsel for the petitioners and Mr. J.P. Dhull, A.A.G., Haryana for the respondent.

7. Shri J.S. Malik, learned counsel for the petitioners has submitted that if the provision of Order 23, Sub-rules (1) to (3) of Rule 1 C.P.C. are held applicable, then the order passed by the learned Additional District Judge is liable to be set aside. He further submitted that the provisions of Order 23, Sub-rules (1) to (3) of Rule 1 C.P.C. should be construed liberally and the principles incorporated therein should be invoked to decide this case. According to the learned counsel, there is a duty casted on the Court to adopt parental attitude in such like cases.

8. The provisions of Order 23, Sub-rules (1) to (3) of Rule 1 C.P.C. are reproduced below for facility of reference:-

"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 claims:

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 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."

9. A perusal of the above reproduced provisions makes it abundantly clear that an elaborate procedure has been prescribed for withdrawal of suit or abandonment of a part of the claim in cases where the plaintiff is a minor. Unless, leave of the Court

is granted there could be no withdrawal of suit or abandonment of part of the claim. The procedure prescribed is that an application accompanied by an affidavit of the next friend has to be filed for such a withdrawal/abandonment which should state in clear terms that it would be for the benefit of minor. It is on the satisfaction of the Court that such an application could be allowed.

10. A claim made u/s 18 of the Act is for the enhancement of compensation in respect of the land acquired by the State. On plain reading of Order 23, Sub-rule (1) to (3) of Rule 1 CPC, it cannot be said that abandonment of a claim u/s 18 of the Act would not be a claim. However, the question would be whether it could be pleaded by learned counsel for the minors in the trial Court that he did not want to press the application under Order 9, Rule 9 CPC or the permission of the minors was required to be specifically taken. Taking the over all view of the facts and also avoiding procedural technicalities. I am of the considered opinion that a liberal approach in such like cases should be followed.

11. Applying the principle enunciated in Order 23, Sub-rules (1) to (3) of Rule 1, CPC, I have no hesitation to come to the conclusion that the application under Order 9, Rule 9 CPC could not have been dismissed on the statement of learned counsel that he did not want to press the same without the express permission of the Court and an affidavit from the learned counsel that such a statement did not cause any prejudice to the rights of the minors.

12. In view of above, these revision petitions are allowed, order dated 23.4.1981 is set aside and a direction is issued to the learned Additional District Judge, Kaithal that the applications filed by the petitioners under Order 9, Rule 9 CPC may be considered on merits in accordance with law which is directed against the order dated 23.9.1978. In view of the fact that the case is pending for the last about two decades, I consider it appropriate to direct the learned Additional District Judge to expedite the hearing, and decide the same, as early as possible, preferably within a period of three months.