
(2009) 09 P&H CK 0138
In the Punjab And Haryana At Chandigarh

Anand Sarrup Dass Chela Mahant Ram Sawrup Dass Chela
Shri Rattan Dass

APPELLANT

Vs

Sardar Singh and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Citation : (2009) 156 PLR 811

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Judgement

Ajay Kumar Mittal, J.—In this revision petition, the plaintiff has challenged the order dated 19.2.2005 whereby his prayer for withdrawal of the first appeal as well as the civil suit was partly allowed and he was allowed to withdraw the appeal only and not the civil suit thereby upholding the judgment and decree dated 20.8.2003 passed by the trial court against him.

2. Briefly stated, the facts of the case are that the plaintiff-petitioner filed a suit for permanent injunction against the defendant-respondents with the averments that the land in dispute was owned and possessed by Mahant Ram Sawroop Das Chela Rattan Das and the plaintiff having been adopted by him as his Chela, he bequeathed all the property of the Dera to him by virtue of registered Will No. 65 dated 11.11.1992. It was averred that after the death of Ram Sawroop Das on 12.6.1993, the plaintiff became the owner in possession of the suit land on the basis of the Will dated 11.11.1992 and the defendants were interfering in the peaceful possession of the plaintiff over-there, without any right, title or interest and, therefore, the suit for permanent injunction was filed.

3. The trial court on appreciation of the oral as well as the documentary evidence led by the parties dismissed the suit vide judgment and decree dated 20.8.2003. Aggrieved by the dismissal of the suit, the plaintiff-petitioner preferred an appeal before the lower appellate court. When the appeal came up for hearing before the lower appellate court on 15.2.2005, the plaintiff-petitioner wanted to withdraw the suit as well as the appeal and made the following statement in this

regard:

Statement of Sh. Anand Sarup Das Chela Mahant Ramswarup Das aged 70 years resident of Village Sohla on S.A. with Sh. N.P. Mittal, Advocate for the appellant; without oath.

I may be allowed to withdraw the suit as well as the appeal.

Sd/- Sd/- RO&AC District Judge, Narnaul 15.2.2005

4. It was thereafter that the lower appellate court dismissed the appeal as withdrawn but did not permit the plaintiff-petitioner to withdraw the suit. It is this order of the lower appellate court which has been impugned in the instant revision petition.

5. Learned Counsel for the petitioner has submitted that the lower appellate court was remiss in partly accepting the statement of the plaintiff-petitioner which was made with a clear intent to withdraw both the appeal as well as the civil suit. He has further submitted that the lower appellate court should have accepted the statement made by the plaintiff-petitioner in toto as it was not open for the court to split up the statement into two parts and thereby allowing the withdrawal of the appeal only and not permitting the withdrawal of the civil suit. Learned Counsel has placed reliance on a judgment of this Court in Surjan Singh and Others Vs. Amarjit Singh and Others, in support of his contention.

6. Controverting the aforesaid submissions of the learned Counsel for the petitioner, learned Counsel for the respondents has supported the order passed by the lower appellate court and submitted that since the plaintiff-petitioner had made a statement for withdrawal of the appeal, the lower appellate court was right in passing the order dated 19.2.2005 which has been impugned in the instant revision petition.

7. I have heard the learned Counsel for the parties and have perused the record. I find force in the submissions made by the learned Counsel for the petitioner.

8. The issue raised herein is no longer res integra. The matter came up for consideration before this Court in Surjan Singh's case (supra), wherein the issue was-where a party had sought withdrawal of his suit with permission to file a fresh suit on the same cause of action, could the court accept the statement of the plaintiff partially and allow him to withdraw the suit without granting permission to file a fresh suit on the same cause of action. In that case, the court observed that it was not open to the court to split up the statement of a party into two parts, i.e. one for withdrawal of the suit but without adverting to the second request for permission to file a fresh suit on the same cause of action. The relevant observations recorded in paras 7 and 8 read thus:

7. Learned Counsel for the petitioners contended that the statement of the counsel for the plaintiffs should have been taken into consideration as a whole by the Court and the same could not be split up into two parts, that is dismissing

the suit as withdrawn on request, but not permitting them to file a fresh suit on the same cause of action. The prayer for dismissal of the suit and permission to file a fresh suit on the same cause of action was an integral request, which had to be taken into consideration as a whole. For this proposition, he has relied upon a judgment of the Himachal Pradesh High Court, reported as Hans Raj Akrot v. State of Himachal Pradesh 1988(2) C.L.J. 583. I find substance in the submission of the learned Counsel for the plaintiff-petitioners. The statement made by the learned Counsel for the plaintiffs had to be read as a whole and the same could not be split up. Permission to file a fresh suit on the same cause of action and the permission granted for withdrawal of the suit, was integral part of the request made to the Court. In these circumstances, the Court is to permit withdrawal of the suit coupled with the liberty to file a fresh suit. The Court in the given case brought before it may refuse to grant permission to withdraw the suit, but it is not open to the Court to split up the statement into two parts, that is permission to withdraw the suit, but without adverting to the other request of the plaintiffs for permission to file a fresh suit on the same cause of action.

8. For the aforementioned reasons, revision petition is accepted. Order of the trial Court dated 7th November, 1989 is set aside and it be deemed that the suit of the plaintiffs was allowed to be withdrawn with permission to file fresh suit on the same cause of action. No order as to costs.

9. Applying the aforesaid principles to the present case, the lower appellate court cannot be said to be legally right in permitting the petitioner to withdraw the appeal without allowing him to withdraw the suit as well. Accordingly, the revision petition is allowed and the order dated 19.2.2005 is set aside. The matter is remitted to the lower appellate court to proceed further in accordance with law.

10. The parties through their counsel are directed to appear before the lower appellate court on 9.11.2009 for further proceedings in accordance with law.