

**(1989) 10 RAJ CK 0020**

**In the Rajasthan High Court**

**Case No : Civil Revision Petition No. 672 of 1984**

Durga Prasad

APPELLANT

Vs

Radhey Shyam and Others

RESPONDENT

**Date of Decision : 16-10-1989**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule 2(2), Order 23 Rule 1, Order 23 Rule 1(1), Order 6 Rule 17

**Citation : AIR 1990 Raj 57 : (1989) 2 RLW 99 : (1990) 1 WLN 171**

**Hon'ble Judges : D.L. Mehta, J**

**Bench : Single Bench**

**Advocate : R.S. Kejriwal, for the Appellant; M.M. Ranjan, for the Respondent**

## **Judgement**

D.L. Mehta, J.—Petitioner preferred this revision petition being aggrieved with the order dated 2nd August, 1984 passed by the learned Civil Judge, Jhunjhunu. Suit was instituted for the recovery of the rent, interest and ejectment etc. in the Court of learned Civil Judge, Jhunjhunu. The valuation of civil suit was assessed as Rs.8,727/- on account of arrears and interest. The suit was also valued for the purpose of ejectment and the valuation was fixed as Rs. 1,608/-. Thus, the total valuation was Rs. 10,335/- and the Court fee was also paid on the same amount. An application was moved for the amendment of the plaint and it was mentioned in that application that the petitioner wants to give away the relief relating to the rent for the period 1st March, 1975 to 31st October, 1975. Petitioner also gave away the relief of interest. Thus, the valuation of the suit was reduced by abandoning/giving-up the relief relating to rent and interest referred above. An application under Order 6 Rule 17 C.P.C. was moved by the petitioner and the same has been rejected by the trial Court.

2. Being aggrieved with the order dated i 2nd August, 1984 passed by the learned Civil . Judge, Jhunjhunu, this revision petition has been preferred before this Court.

3. Mr. Kejriwal, learned counsel for the petitioner submits that it is the right of

the party to give up the part of the relief prayed in the suit. The Court has no jurisdiction to deny the giving away or abandoning the relief or part of the relief prayed in the plaint,

4. On the other hand, Mr. Ranjan, submits that passing of order on application under Order 6 Rule 17, is the act of the Court and the Court has rightly rejected the application as the Court has no jurisdiction to deal with the application. Mr. Ranjan, has also cited before me the case of Gangabux v. Ayodhya-prasad 1954 RLW 583, in which this Court has held that where the Court has no jurisdiction to the suit as originally valued but the plaintiff puts in an amendment relinquishing part of his claim and thus bringing it within the jurisdiction of the Court it was held that such an amendment could not be allowed and the plaint must be rejected.

5. Learned counsel for the petitioner has also relied upon the judgment of the Bombay High Court namely Shobha Venkat Rao Vs. K.R. Mahale, Mr. Kejriwal, learned counsel for the petitioner submits that thraabandonment by apart of the claim is a right of the party and it is not necessary to amend the plaint.

6. I have heard the rival contentions of the learned counsel for both the parties. Order 2 Rule 2 Sub-clause (2) deals with the frame of the suit Order 2, Rule 2 Sub-clause (2) provides that where a plaint omits to sue in respect of, or intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished. Rule 2 empowers the plaintiff to relinquish the part of the claim and the permission of the Court is not necessary and it is also not necessary to amend the suit for the purpose of relinquish-ment. Once the plaintiff has relinquished the part of the claim or part of the relief then he cannot file a suit for the grant of relief which has been relinquished, Thus, 0.2, Rule 2 sub-clause (2) empowers the party to relinquish any part of the relief without amending the suit. Any application moved for the relin-quishment of any relief prayed for in the original plaint should be treated as an application under 0.2, Rule 2 Sub-clause (2), C.P.C. and cannot be treated as an application under O. 6, Rule 17 of the C.P.C. Order 6 Rule 17 empowers the Court to accept the amendment prayed for or to reject the amendment prayed for. Thus, it is the act of this Court by which the party applying for the amendment gets relief and the intervention of the Court and the order of the Court is necessary for this purpose. As far as Order 2 Rule 2 Sub-clause (2) relating to the framing of the suit is concerned, it empowers the party himself to relinquish or to abandon or to relinquish any relief or part of the relief prayed for and that the permission of the Court is not necessary. Order 23 is "independent of other orders referred above Order 23 Rule 1, provides that at any time after the institution of the suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. No application is necessary for the abandonment of the claim or part of the claim and it is not necessary to obtain any order of the Court. It is only an intimation/information to the submission of the Court that the party has relinquished/ abandoned or has given-

up the part of the relief as claimed. Clause (2) of Order 2 Rule 2 of C.P.C. provides that if the plaintiff wants to file a separate suit based on the same relief which is pending, then he should abandon the relief with the permission of the court for that purpose. Thus, the Sub-Clause (2) of Order 23 Rule 2, C.P.C. makes it clear that the permission of the court or the intervention of the court necessary only when the plaintiff wants to withdraw or abandon or to relinquish the part of relief with a prayer that he may be allowed to file a fresh suit. If part of relief is relinquished or abandoned then no permission of court is necessary as he will be deprived in future from filing the suit based on that part of the abandoned or relinquished claim. Application moved by the petitioner should be deemed to have been filed under Order 2 Rule 2, Sub-Clause (2) read with Order 23, Rule 1, Clause (1) of C.P.C. and the petitioner should be allowed to relinquish the claim for which he has prayed before the trial court. However, this application cannot be treated as an application under Order 6 Rule 17 and the court has no jurisdiction to decide an application under Order 6 Rule 17 when the court prima facie feels that the court is having no jurisdiction. The order of the court below is modified to this extent that the application should be treated as an application moved under Order 2 Rule 2, Sub-Clause (2) read with Order 23 Rule 1, Clause (1) of the C.P.C. and the petitioner should be allowed to relinquish the claim prayed for.

7. In the result, the revision petition is disposed of accordingly. However, it is observed that after the relinquishment of the claim as prayed for, it is not necessary to return the plaint.

8. Cost may easy.