
(1998) 05 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1028 of 1984

Rattan Lal and Others

APPELLANT

Vs

Shrimati Tabbo and Others

RESPONDENT

Date of Decision : 18-05-1998

Acts Referred:

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

Citation : (1999) 2 CivCC 343 : (1998) 120 PLR 809 : (1998) 3 RCR(Civil) 545

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

Bench : Single Bench

Advocate : Ravinder Chopra and R.S. Chauhan, for the Appellant;

Final Decision : Allowed

Judgement

G.C. Garg, J.—This revision petition is directed against the order dated 9.3.1984 of Senior Sub Judge, Ferozepur.

2. Smt. Tabbo widow of Sahib Singh filed a suit for possession of House No. 1854 in village Jalallabad West, District Ferozepur. Precisely the case of the plaintiff was that she was a tenant in the demised premises and was forcibly dispossessed. She consequently sought restoration of the possession. The defendants-petitioners denied the allegations and pleaded that defendant No. 1 got possession of the house from the plaintiff on payment of some consideration and then sold the premises to the petitioners. The case was at the stage of arguments after the parties closed their evidence, when plaintiff moved an application under Order XXIII Rule 1 CPC seeking permission to withdraw the suit to file a fresh one on the same cause of action. It was inter alia pleaded she could not plead restoration of possession for specific portion of demised premises and also could not prove the site plan and in the absence thereof, she may be loose the suit and consequently prayed withdrawal of the same with permission to file fresh suit on the same cause of action.

3. After hearing learned counsel for the petitioner, I am of the opinion that the

order under revision is not sustainable. The trial Court seems to have been influenced by the fact that plaintiff was unable to prove the site plan and also to adduce evidence which may grant her the relief prayed for while granting permission to the plaintiff to withdraw the suit with permission to file a fresh one on the same cause of action. In case of Chander etc. v. Guljari Lal (1979) 81 P.L.R. 637 , a Division Bench of this Court while considering the permission to withdraw the suit, reasons have to be recorded that there was a formal defect on account of which the suit was likely to fail. In other words, it was concluded that it is incumbent on the trial Court to record findings about the formal defect and further that on account of that formal defect the suit is likely to fail. Same is the view taken by this Court in the case of Baljit Singh Vs. Jot Ram, and Bansi Lal Clarence Vs. The United Church of Northern India Trust Association and Another, . In the present case the trial Court has neither pointed out any formal defect nor it came to the conclusion that suit is likely to fail on account of that formal defect. The trial Court has come to the conclusion that plaintiff was unable to prove her case by proving the site plan and proving the number of rooms in her possession. In other words, trial Court came to the conclusion that the evidence to prove the case of the plaintiff had not been produced and in that view of the matter, he allowed the suit to be withdrawn with permission to file fresh one on the same cause of action.

4. In the facts and circumstances of the case and keeping in view the fact that even if the plaintiff has given boundaries of demised premises, it was open to her to seek amendment of the plaint and if permission had been granted, obviously, she would have been granted permission to lead additional evidence on amended issue after amendment of the plaint. Plaintiff did not choose to do so and only sought permission to withdraw the suit without showing to the satisfaction of trial Court a formal defect in the plaint and dismissal of the suit on that ground.

5. For the reasons recorded above, this petition is allowed and order under revision is set aside. Petitioner through his counsel (as plaintiff-respondent has not put in appearance) is directed to appear before the trial Court on 21.7.1998 for further processings.