
(1998) 02 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2084 of 1997

Satish Bhardwaj, Advocate

APPELLANT

Vs

Dhani Ram and Others

RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 115

Citation : (1999) 1 CivCC 450 : (1998) 2 CivCC 480 : (1999) 2 ILR (P&H) 45 :
(1998) 119 PLR 73 : (1998) 2 RCR(Civil) 132

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Sudarshan Goel, for the Appellant;

Final Decision : Allowed

Judgement

Sat Pal, J.—By this order, I am disposing of three petitions bearing C.R. No. 2084 of 1997, C.R. No. 2100 of 1997 and C.R. No. 2101 of 1997 as the point of law raised in all these petitions is identical.

2. All these petitions have been preferred against the orders dated 5.2.1997 by the learned Addl. District Judge, Patiala. By the impugned orders, the learned additional District Judge has rejected the application filed on behalf of the plaintiffs/petitioners to withdraw the suit since the suit has already been decreed and the matter is pending before the learned lower appellate Court.

3. Notice of these petitions was issued to the respondents. Respondents No. 1 to 4, 5, 6, 8 to 10 were proceeded against exparte, vide order dated 27.8.1997. Respondent No. 7 is dead and his name was ordered to be deleted from the array of the respondents vide order of the said date. Respondent No. 3 could not be served for want of complete address but interest of respondent No. 3 was represented by respondents 1 and 2 and they being co-plaintiffs had not put in appearance and were proceeded against ex-parte. None is present on behalf of the respondents though the case has been called out third time after two pass

overs were given. Accordingly, I proceed to dispose of the petitions.

4. Mr. Sudershan Goel, the learned counsel appearing on behalf of the petitioner submits that Order 23 Rule 1 Sub-rule (1) gives an unqualified right to a plaintiff to withdraw from the suit, if no permission to file a fresh suit is sought under Sub-rule (2) of that rule. He submits that in the present case the plaintiff is not seeking permission of the court to file a fresh suit. He, therefore, contends that the learned lower appellate court was not right in refusing the application of the plaintiffs to withdraw the suit. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in *State of Maharashtra Vs. Dr. R.B. Chowdhary and Others*, , decision of Kerala High Court in *Ammini Kutty and Others Vs. George Abraham*, and a judgment of Orissa High Court in *Dinabandhu Sahoo Vs. Budhi Debi (dead) (and after her) Narasingh Parida*, . The learned counsel further submits that the appeal is a continuation of the original proceedings and as such the plaintiff/petitioner should be granted permission to withdraw from the suit. In support of this submission he has placed reliance on a judgment of the Supreme Court in *Karan Singh and others, etc., Vs. Bhagwan Singh (Dead) by LRs. and others, etc.,* .

5. After hearing the learned counsel for the petitioner and having perused the impugned order as well as the law laid down in the various judgments mentioned herein above, I am of the opinion that the impugned orders dated 5.2.1997 cannot be sustained. As held by the Supreme Court in the case of *Karan Singh (supra)* the appeal is a continuation of the original proceedings. Since the appeal is the continuation of the suit, and the plaintiff is not seeking permission of the Court to file a fresh suit, the permission to withdraw from the suit has to be granted to the plaintiff in terms of Order 23 Rule 1 CPC. Accordingly, all the petitions are allowed and the impugned orders, all dated 5.2.1997 passed by the learned Additional district Judge, Patiala, are set aside. Consequently, all the three suits bearing No. 389-T dated 17.10.1992, Suit No. 1477/1993, dated 8.4.1990 and suit No. 725-T/93 dated 4.4.1990 filed by the petitioner/plaintiff before the learned trial Court stand dismissed as withdrawn. The view I have taken finds support also from the judgment of the Supreme Court in the case *Shaik Hussain and Sons Vs. M.G. Kannaiah and Another*, . Since the respondents have chosen not to appear, the plaintiff is not burdened with any costs.