



**CR No. 5186 of 2023**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CR-5186-2023 (O&M)**  
**Decided on : 01.09.2025**

**Sukhwinder Kaur**

**.....Petitioner**

**Versus**

Jagjit Singh @ Jagdish Singh & Anr.

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:** Mr. Deepak Kaushal, Advocate, for the petitioner.

Mr. Mandeep Singh, Advocate for respondent No.1.  
(through VC)

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**DEEPAK GUPTA, J.**

The petitioner herein is one of the defendants in civil suit No. 163 of 2019 titled 'Jagjit Singh @ Jagdish Singh Vs. Gurmail Singh @ Gurmukh Singh & Anr.' which was pending before Civil Judge (Jr.Divn.), Dabwali. She is aggrieved by the order dated 17.08.2023 (*Annexure P-5*) passed by the trial Court, whereby plaintiff Jagjit Singh @ Jagdish Singh (*respondent No.1 herein*) has been permitted to withdraw the suit with liberty to file fresh suit on the same cause of action.

2. Learned counsel contends that impugned order has been passed without giving any reasons, despite the fact that application was moved by the plaintiff at belated stage, when he failed to produce any evidence after last opportunity was granted to him.

3. The plaintiff had filed the suit assailing sale-deed No. 4255 dated 26.03.2018 and sale deed No. 177 dated 10.04.2018 and subsequent mutations. It is not in dispute that case was at the stage of plaintiff's evidence with last opportunity, when the application (*Annexure P-3*) for withdrawal of the suit was moved. It was stated in the application that sale-

**CR No. 5186 of 2023**

deed No. 10693 dated 25.03.1977 was also required to be assailed, but inadvertently the same could not be challenged. Besides, Gurdev Singh, Gurnam Singh, Pritam Singh etc. were not impleaded as defendants and thus there was a formal defect.

4. Perusal of the impugned order would reveal that no reasoning whatsoever has been given by the trial Court for permitting the plaintiff to withdraw the suit with liberty to file fresh one on the same cause of action.

5. Order XXIII Rule 1 (3) provides as under:-

“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 the 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.”

6. It is evident from the aforesaid provision that before granting permission to the plaintiff to withdraw the suit or part of the claim with liberty to institute a fresh suit in respect of subject matter of such suit or part of the claim on the same cause of action, the Court is required to record its satisfaction that suit must fail by reason of some formal defect or that there are sufficient grounds to allow the plaintiff to institute a fresh suit in respect of subject matter of such suit or such part of the claim. However, in the present case, the trial Court has not at all recorded any such satisfaction. In fact, no reasoning whatsoever has been given in the impugned order while allowing the plaintiff to withdraw the suit and file fresh suit on same cause of action.

7. In view of the aforesaid facts and circumstances, the impugned order is hereby set aside. The matter is remanded back to the trial Court with direction to pass a reasoned order on the application (Annexure P-3) moved by the plaintiff for seeking permission to withdraw the suit with



**CR No. 5186 of 2023**

liberty to file fresh suit on the same cause of action. It is made clear that trial Court will not be influenced by any opinion of this Court while passing the fresh order on the application under Order XXIII Rule 1 CPC while deciding it on its merits.

**01.09.2025**

*Jiten*

**(DEEPAK GUPTA)**

**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No