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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6077-2022

Date of decision : 08.07.2025

Dharampal

...Petitioner

Versus

Krishan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Sandeep Sharma, Advocate for respondent No.1

PANKAJ JAIN, J. (ORAL)

Instant revision petition is directed against order dated 31.10.2022 passed by Ld. Civil Judge (Senior Division), Charkhi Dadri whereby application filed by plaintiff seeking withdrawal of the suit with liberty to file a fresh on the same cause of action, has been allowed.

2. Counsel for the petitioner submits that the Trial Court wrongly allowed the application after the petitioner has been made to face prolonged ordeal of trial for 7 years without there being any formal defect. He submits that only formal defect that was spelled out in the application was that the State of Haryana and the Revenue Department which were necessary parties were not impleaded and the appropriate relief could not be sought. He submits that he is ready to give concession that the necessary parties in form



of State of Haryana and Revenue Department be allowed to be impleaded and the suit be ordered to proceed from the same stage but the application for filing fresh suit on the same cause of action, be not allowed.

3. Per contra, counsel for the respondent/plaintiff submits that there was a discrepancy between Parat Sarkar and Parat Patwar. The suit was filed on the basis of parties detailed out in Parat Patwar due to which necessary parties could not be impleaded. It being formal defect which was fatal to the suit, the application was moved which has been rightly allowed by the Trial Court.

4. I have heard counsel for the parties and have carefully gone through records of the case.

5. Order XXIII CPC deals with withdrawal and adjustment of suits. Order XXIII Rule 1 deals with withdrawal of suit or abandonment of part of claim. The same reads as under:

“[1. Withdrawal of suit or abandonment of part of claim.— (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.



(3) 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 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.

(4) Where the plaintiff—

- (a) abandons any suit or part of claim under sub-rule (1), or
- (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

6. Explaining the import of the provision, Supreme Court in the case of '**K.S. Bhoopathy vs. Kokila, (2000) 5 SCC 458**' observed as under:

“13. The provision in Order 23 Rule 1 Civil Procedure Code is an exception to the common law principle of non suit. Therefore on principle an application by a plaintiff under sub-rule (3) cannot be treated on par with an application by him in exercise of the absolute liberty given to him under sub-rule (1). In the former it is actually a prayer for concession from the Court after satisfying the Court regarding existence of the circumstances justifying the grant



of such concession. No doubt, the grant of leave envisaged in sub-rule (3) of Rule 1 is at the discretion of the Court but such discretion is to be exercised by the Court with caution and circumspection. The legislative policy in the matter of exercise of discretion is clear from the provisions of sub-rule (3) in which two alternatives are provided: (1) where the Court is satisfied that a suit must fail by reason of some formal defect, and the other where the Court is satisfied 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. Clause (b) of sub-rule (3) contains the mandate to the Court that it must be satisfied about the sufficiency of the grounds for allowing the plaintiff to institute a fresh suit for the same claim or part of the claim on the same cause of action. The Court is to discharge the duty mandated under the provision of the Code on taking into consideration all relevant aspects of the matter including the desirability of permitting the party to start a fresh round of litigation on the same cause of action.”

7. Explaining the scope of expression ‘formal defect’ as contemplated under Order XXIII Rule 1(3), Supreme Court in the case of **‘V. Rajendran vs. Annaswamy Pandian (D) Thr. Lrs. Karthyayani Natchiar, 2017 AIR (SC) 685** observed as under:

"Formal defect" is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis-joinder of parties, failure to disclose a cause of action etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

11. In terms of Order 23, Rule 1 (3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient



grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause(b) should be read independent of the words a 'formal defect' and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is "sufficient grounds".

8. The afore-stated ratio of law laid down by Supreme Court when read in light of proviso attached to Order I Rule 9 CPC, it is amply clear that non-joinder of necessary party constitutes a 'formal defect' in the suit.

9. The suit was filed wherein the plaintiff made following prayers:

“Suit for Declaration to the effect that the plaintiff and performa defendants are only entitled to inherit the land measuring 29K-4M share of Bhartu out of total land measuring 210K-9M comprised in khatoni no. 160, 162/193 to 195 and 197; 162/196, 163, 164 as per mutation no. 829 dated 13.06.1997 held with Parat Sarkar situated in the revenue estate of village Kheri Bura Tehsil Charkhi Dadri Distt. Bhiwani as heirs of Bhartu who dies issueless and entries incorporated in revenue records on the basis of the mutation no. 829 dated 13.06.1997 held with Halka Patwari in favour defendants by playing fraud and in connivance with revenue authorities are liable to be declared as null and void; illegal, against facts, against rules governing the record of right, arbitrary, malafide, without jurisdiction, null and void, discriminatory, against settled law, against principles of of natural justice and equity, and in-effective against the rights plaintiff and performa defendants, non established in the eyes of Law and liable to be quashed and not binding on the rights of plaintiff and performa



defendants are liable to be corrected and consequential relief of Mandatory injunction directing the revenue authorities to cancel the entries incorporated in the jamabandis on the basis of mutation held with Halka Patwari in favour of defendants and correct entries be incorporated in the Revenue Records in favour of plaintiff and performa defendants as per mutation no. 829 dated 13.06.1997 held with Parat Sarkar.

AND

Suit for restraining injunction defendants from alienating the complete suit land or any part of it to harm the plaintiff and performa defendants by Mortgage, sale, gift, lease or exchange or in any other way and not to dispossess the plaintiff and performa defendants and with alternative relief if the suit land or any part of it is alienated in any way during the pendency of the suit such alienation is not binding on the interest of plaintiff and if the plaintiff is found to be out of possession or is dispossessed at any stage of the case suit for possession of above suit land.”

10. There is no denial to the fact that the present application seeking withdrawal of the suit was filed at the fag end when the trial was about to be concluded and was at the stage of final arguments. Trial Court allowed the application observing as under:

“5. I am of the considered opinion that the some of the parties which had to be excluded, have been included and some of the properties mentioned were to be excluded and some other properties were liable to be added. This particular defect cannot be cured by bringing amendment as it would jumble the suit and hotch-potch the proceedings. The only manner is to file fresh suit. Moreover, there can be no any limitation to file a fresh suit to challenge wrong entries as the right is inherent in the plaintiff. As such the present plaintiff is liable to be allowed to withdraw the present suit and to file a fresh suit on same cause of action as the relief so sought by the plaintiff is in existence in the documents of



Parat Sarkar but has wrongly been mentioned in the document of Parat Patwar, Accordingly, the application is hereby allowed. The present suit is hereby dismissed as withdrawn. Plaintiff is given liberty to file a fresh suit on same cause of action. File be consigned to the record-room after due compliance.

11. Keeping in view that the primary declaration is *qua* the mutation entries and that no third party right has accrued, this Court finds no reason to interfere in a well reasoned order passed by the Civil Judge, observing that non-impleadment of the necessary parties being fatal in a formal defect. Finding no merits in the instant revision petition, the same is ordered to be dismissed.

12. Needless to say, anything observed herein shall not be construed as an expression on the merits of the case including the plea of limitation if available to the petitioner.

July 08, 2025

Dpr

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No