



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

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CR-2995-2025 (O&M)
Date of Decision: 16.05.2025

Vivek Yadav and another

...Petitioners

V/s

Karan Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Keshav Pratap Singh, Advocate, for the petitioners.
Mr. Aditya Jain, Advocate, for respondent No.1.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition assails the order dated 29.01.2025 (Annexure P-10) passed by the Court of Civil Judge (Jr. Divn.), Faridabad, vide which permission was granted to the respondents-plaintiffs to withdraw their suit i.e. CS No.2972 of 2024 with liberty to file a fresh suit.

2. A suit for permanent injunction (Annexure P-1) was filed by the respondents-plaintiffs (Karan Singh and others) against the petitioners-defendants (Vivek Yadav and another), restraining the petitioners-defendants from raising any type of construction or from changing the nature of the suit land by carving out plots and from alienating/transferring any part of the suit land. The case set up was that the respondents-plaintiffs, being owners/co-sharers in possession of agricultural land (fully described in the plaint) situated within the revenue estate of Village Bhupani, Tehsil and District Faridabad (hereinafter referred to as the "suit land") had agreed to sell the suit land to the petitioners-defendants and, for the said purpose, had executed five



agreements to sell, all dated 21.12.2024 fixing the sale consideration at Rs.1.92 crores per acre. The suit was accompanied by an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short the "CPC") (Annexure P-2) for the grant of ad interim injunction. The suit was opposed by way of written statement (Annexure P-3), wherein the factum of execution of the agreement to sell was admitted. Mention was made about five different suits for permanent injunction having been filed by the respondents-plaintiffs regarding each agreement to sell. On merits, certain facts were given. Reply (Annexure P-4) to the application for the grant of ad interim injunction was also submitted.

3. On 27.01.2025, learned counsel representing the respondents-plaintiffs suffered a statement that he wanted to withdraw the suit with liberty to file a fresh suit. The statement was opposed by the petitioners-defendants. However, vide the impugned order dated 29.01.2025, permission was granted, leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties. It would be relevant to mention here that though the case is fixed for preliminary hearing, learned counsel for respondent No.1 has put in appearance.

5. Learned counsel representing the petitioners has strenuously urged that the impugned order is not sustainable. Reference has been made to the provisions of Order XXIII Rule 3 CPC, which provides for withdrawal/adjustment of suits and the circumstances in which a plaintiff can be permitted to withdraw a suit with liberty to institute a fresh suit. It has been submitted that the ingredients provided in the said provision were not present, in as much as, no application for withdrawal of the suit was filed, no formal defect in the suit was pointed out, no sufficient ground was shown for withdrawal of the suit with liberty to file a fresh suit and no such satisfaction



was recorded by the trial Court. Learned counsel has referred to various documents annexed with the paper-book and has submitted that the impugned order is not sustainable. Learned counsel has submitted that the suit could have been amended even if the respondents-plaintiffs wanted to challenge the agreement and there was no requirement of filing a fresh suit. In support of his contentions, learned counsel has placed reliance upon;

1. ***Kunal Khurana vs. Puneet Kumar, 2025(1) Law Herald 496*** (a judgment of a coordinate Bench of this Court);
2. ***V. Rajendran and anr. Vs. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar, (2017) 5 SCC 63;***
3. ***Vinod Kumar vs. Gurdev Singh and others, 2016(2) RCR (Rent) 103*** (a judgment of a coordinate Bench of this Court);
4. ***K.S. Bhoopathy vs. Kokila, (2000) 5 SCC 458*** and
5. ***Rattan Lal vs. Smt. Tabbo, 1998 (3) RCR (Civil) 545*** (a judgment of a coordinate Bench of this Court).

6. *Per contra*, learned counsel representing respondent No.1 has submitted that the statement given by learned counsel for the respondents-plaintiffs before the Court was self-explanatory and depicted sufficient grounds as referred to in the statutory provisions. He submits that the trial Court had also recorded its satisfaction while granting permission to withdraw the suit with liberty to file afresh. Learned counsel has further submitted that the petitioners have not approached the Court with clean hands as they had duly submitted to the jurisdiction of the trial Court upon a fresh suit having been filed by the respondents-plaintiffs. He submits that in fact the application for ad interim injunction filed by the respondents-plaintiffs was hotly contested by the petitioners-defendants and the same was dismissed vide order dated 13.02.2025 by the Court of Civil Judge (Jr. Divn.), Faridabad. An appeal was preferred against the said decision, which was allowed vide order dated 06.05.2025 passed by the Court of Addl. District Judge, Faridabad and



injunction was granted. Learned counsel submits that it is immediately after the grant of ad interim injunction that the present revision petition has been preferred, that too without disclosing the aforesaid facts in the revision petition. In support of his contentions, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court of India in *Anil Kumar Singh vs. Vijay Pal Singh and others* (Civil Appeal No.20007 of 2017 arising out of SLP (C) No.16749 of 2010, decided on 30.11.2017) and a judgment of the Delhi High Court in *VIP Pharmaceuticals Pvt. Ltd. Vs. Rhydburg Pharmaceuticals Limited*, 2024 NCDHC 7042.

7. I have considered the submissions made by learned counsel for the parties.

8. Order XXIII CPC deals with withdrawal and adjustments of suits.

Rule 3 thereof is relevant for the issue in hand:-

“WITHDRAWAL AND ADJUSTMENT OF SUITS

(1) xxx xxx xxx

(2) xxx xxx xxx

(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 a suit or part of a claim, 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.”

9. Concededly, the suit was at its preliminary stage. Only pleadings were complete and application for the grant of ad interim injunction had been decided. No further proceedings had taken place. In the meantime, learned counsel for the respondents-plaintiffs gave a statement on 27.01.2025 that he wanted to withdraw the suit with liberty to file afresh. No doubt, the said statement did not refer to any formal defect or any sufficient ground. The order passed by the Court concerned on 27.01.2025 needs reference;



“At this stage, learned counsel for the plaintiff appeared and vide his separate recorded statement has withdrawn the present suit. He further requested to give liberty to file fresh suit. Heard. Now, the case is adjourned to 28.01.2025 for filing objections by defendant, if any.”

10. On 28.01.2025, the aforesaid statement was objected to by learned counsel representing the petitioners-defendants and the following order was passed;

“Today the case was fixed for filing objections by defendants to the statement suffered by learned counsel for the plaintiff on 27.01.2025. Learned counsel for the defendants appeared and stated that learned counsel for the plaintiffs has not mentioned the technical ground in his statement. On this learned counsel for the plaintiffs orally submitted that he wants to withdraw the present suit with liberty to file fresh under Order 21 Rule 1(3) of CPC on the ground that inadvertently they have not sought relief of declaration for declaring agreement to sell of the suit property as null and void and they have filed merely suit for permanent injunction. Learned counsel for the plaintiffs further submitted that their suit is within limitation and on the above said ground prayed for granting permission to withdraw the suit with liberty to file the fresh suit.

On the other hand learned counsel for the defendants has strongly opposed the prayer of the learned counsel for the plaintiffs on the ground that the learned counsel for the plaintiffs have not disclosed the formal defect or any other sufficient grounds as per order 23 Rule 1(3) CPC with the liberty to file the fresh suit. He further submitted that the plaintiffs have liberty to amend the present plaint under Order VI Rule 17 CPC to include the relief of declaration for declaring the agreement to sell the suit property as null and void and the same shall be decided in the present suit after taking into consideration the evidences and other documents and prayed for dismissal of the prayer of the learned counsel for the plaintiffs.



Heard. Now, to come upon 29.01.2025 for consideration.”

11. Eventually, the matter was fixed on 29.01.2025 and permission was granted to the respondents-plaintiffs to withdraw the suit with liberty to file afresh;

“Today the case was fixed for consideration on the submissions made by learned counsel for the plaintiffs and learned counsel for the defendants No. 1 and 2.

Perusal of the statement made by learned counsel for the plaintiffs on 27.01.2025 shows that learned counsel for the plaintiffs has not written any technical or formal defect in his statement recorded on behalf of the plaintiffs but it is orally submitted by the learned counsel for the plaintiffs that he wants to withdraw the suit with liberty to file a fresh suit on the technical ground that he wants to challenge the agreement to sell by filing a fresh suit before the Court concerned. The submissions of learned counsel for the plaintiffs was strongly opposed by learned counsel for the defendants with the submissions that the formal defect was within the knowledge of the plaintiffs at the time of filing the present suit and also the plaintiffs have opportunity to amend the present suit to seek the above mentioned relief. The perusal of the case file shows that the present case is at its initial stage and neither any application has been decided in the present case nor any effective order has been passed in the present case on merits of the case and this Court is of the considered view that if plaintiffs be granted permission to withdraw the present suit with liberty to file the fresh, no injustice will be cause to the defendants. By withdrawal of present suit, the defendants should not be deprived of the benefits of any order, if there are any walld defences they can be raised by the defendants in the fresh suit, if any (So, in view of the aboye discussion, I find merit in the submissions made by learned-counsel for the plaintiff and accordingly, the present suit of the plaintiffs is hereby dismissed



a withdrawn with liberty to file a fresh suit. File after due compliance be consigned to record room.”

12. If one considers the matter in totality, it emerges that first, a statement was given by learned counsel for the respondents-plaintiffs. Thereafter, when the Court was considering the issue, learned counsel stated before the Court that he wanted to withdraw the suit with liberty to file a fresh suit as he wanted to challenge the agreement to sell. The Court then noted the submissions made by learned counsel for the defendants as well. The Court, thereafter, noticed that the case was at its initial stage and no effective order had been passed on the merits of the matter and, therefore, came to the conclusion that if the plaintiffs are permitted to withdraw the suit with liberty to file afresh, no injustice would be caused to the defendants. Accordingly, the permission was granted.

13. In the considered opinion of this Court, the ingredients of Order XXIII Rule 3 CPC stood satisfied. There is no condition that an application for withdrawal should have been filed. Learned counsel for the plaintiffs gave a statement which was duly recorded. He then gave reasons for the statement as well. The statement was objected to. The trial Court considered the statement, as also the objections and then recorded its satisfaction and view and granted the permission. It has to be borne in mind that though, the respondents-plaintiffs could have amended the previous suit also, they could have filed a fresh suit as well after, of course, obtaining permission from the trial Court. In the considered opinion of this Court, the trial Court did not commit any illegality in permitting the respondents-plaintiffs to withdraw the suit with liberty to file afresh.

14. There is another aspect of the matter albeit a serious one. It has been brought to the notice of the Court by learned counsel for respondent



No.1 that pursuant to the suit having been withdrawn, a fresh suit was instituted on 05.02.2025. Notice was issued to the defendants for 11.02.2025. The defendants put in appearance on 11.02.2025. The application for ad interim injunction was dismissed vide order dated 13.02.2025. An appeal was preferred by respondent No.1 against the said order, which was allowed on 06.05.2025.

15. The present revision petition was filed, thereafter, on 13.05.2025. Though, it has been mentioned in the petition that pursuant to the impugned order dated 29.01.2025 having been passed, five separate suits were instituted, no reference was made to the fact that the petitioners had submitted to the jurisdiction of the Court and that the injunction application was initially dismissed by the trial Court but was allowed by the first appellate Court, after which the revision petition was preferred. The petitioners have, therefore, deliberately concealed vital facts from the Court and have made an attempt to mislead the Court. The said attempt is highly condemnable and is deprecated. The revision petition would be liable to be dismissed on this ground alone. However, lest it may prejudice vital rights of the parties, the case has been examined on merits as well. I have gone through the judgments relied upon by the parties.

16. In so far as the judgments relied upon by learned counsel for the petitioners are concerned, there is no quarrel with the proposition of law laid down in the said judgments, which interpret the provisions of Order XXIII Rule 3 CPC and lay down that without the ingredients as laid down in the said provision being there, permission to withdraw the suit with liberty to file afresh cannot be granted. However, all judgments were rendered in different facts and circumstances making them inapplicable to the facts of the present case.



17. In view of the aforesaid, I do not find any merit in the present revision petition and the same is accordingly dismissed. For having made an attempt to mislead the Court, the petitioners are saddled with costs of Rs.50,000/-, which shall be deposited within a period of one week from today with the High Court Legal Services Committee.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

May 16, 2025

vchgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No