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

CR-1906-2025

Date of decision: 28.03.2025

Balwinder Singh

...Petitioner

Versus

Balwinder Kaur (since deceased) through her LRs

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Karamjit Singh Chahal, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for quashing of order dated 28.11.2024 (Annexure P-15) vide which an application filed by the respondent(s) for summoning the file from the record room and for deciding the civil suit as per the order dated 19.05.2015 passed by this High Court in CR-2548-2013, had been allowed.

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for mandatory injunction on 20.05.1986 which was decreed on 03.02.1994. It is submitted that respondent No.1 along with another person had filed a suit for declaration to the effect that they were owners and in exclusive possession of the suit land, which suit was dismissed as withdrawn on 02.03.2013 and liberty was granted to file a fresh suit. It is submitted that the petitioner had filed a revision petition in the year 2013 against the order dated 02.03.2013 and the Coordinate Bench of this Court had allowed the said



revision petition vide order dated 19.05.2015 and the suit filed by the respondent(s) was restored, however, the application for restoration of the suit was filed on 18.09.2019 i.e., after a period of four years. It is further submitted that the subsequent suit filed by the respondent(s) on 21.03.2013 had been dismissed vide judgment dated 09.12.2019 and thus, the order dated 28.11.2024 vide which the application filed by the respondent(s) for deciding the civil suit (Annexure P-3) filed by the respondent(s) has been allowed is illegal and deserves to be set aside.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the impugned order dated 28.11.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

4. It is not in dispute that on 17.08.1996, the respondent-Balwinder Kaur along with another person i.e., Rajinder Singh had filed a suit for declaration to the effect that they were owners and were in exclusive possession of land measuring 245 square yards marked as A, B, C, and D in the site plan and a further prayer for permanent injunction was made. The plaint of the said suit has been annexed as Annexure P-3 along with the present revision petition. It is further not in dispute that vide order dated 02.03.2013, an application moved by the respondent(s) under Order 23 Rule 1 CPC for withdrawing the said suit with permission to institute a fresh suit, was allowed. The said order dated 02.03.2013 has been annexed as Annexure P-9 along with the present revision petition. The present petitioner had filed CR-2548-2013 and a Coordinate Bench of this Court was pleased to set aside the said order



dated 02.03.2013. The order dated 19.05.2015 passed by the Coordinate Bench of this Court is reproduced hereinbelow:-

“1. The order passed by the court below is patently wrong and erroneous. The plaintiffs suit for declaration and injunction and set forth a plea that they got a right to the property by adverse possession they are advised to state that such a plea of adverse possession cannot be persisted. It will be open for them to give up such a plea and seek for the relief of injunction only. An abandonment of any part of the reliefs is perfectly tenable. There can be no fetter on such a right. However, in this case, the plaintiffs have come with a strange plea that they should be permitted to withdraw the suit with liberty to take a plea of adverse possession in the event of the defendant filing a suit and that the plaintiffs must have right to make such a plea by making a counter claim. The basis for such a prayer is untenable. An Abandonment of a part of relief can only bar the plaintiffs from filing a suit on the same cause of action for the same relief under Order 23 of the CPC. If the plaintiff has abandoned the suit in part or full and if the defendant files a suit, there can be no bar against the plaintiff for setting up any plea and the withdrawal of the suit cannot operate against the plaintiff from taking any defence, if a suit were to be filed by the defendant. The court cannot grant a permission for filing a counter claim in an anticipated suit by the defendant. The plaintiff can have no order granted by court below to allow for such a liberty. There is no formal defect or error in the whole frame of the suit but the error, according to him, is the plaintiff could not sue for declaration on the basis of adverse possession. He may abandon such a relief but the suit will not be permitted to be withdrawn with liberty to file a fresh suit in the manner sought for in the petition. The petition ought to have dismissed. The court has allowed the petition which is untenable. The impugned order is set aside and the revision is allowed.



2. *The counsel for the respondents states that pursuant to the impugned order, the plaintiffs have filed a fresh suit for injunction. The plaintiffs may either withdraw the subsequent suit which is filed or he may seek for joint of trial in suits and if such a request is made, it will be considered in the light of any objection that the defendant may take and the court will pass suitable order in accordance with law.”*

5. Thus, the suit filed by the respondent(s) which had been withdrawn with liberty to file a fresh suit vide order dated 02.03.2013 was in effect restored. The Coordinate Bench of this Court had also taken into consideration the fact that subsequent to the passing of the order dated 02.03.2023, a fresh suit had been filed by respondent(s) for injunction and thus, observations were made that the respondent(s) had a right to either withdraw the subsequent suit or a request for joint trial could be made. The application filed by the respondent(s) for summoning the file from the record room and for deciding the civil suit as per the order passed by the Coordinate Bench of this Court on 19.05.2015 in the abovesaid CR-2548-2013, was allowed by the trial Court vide order dated 28.11.2024 after taking into consideration the fact that the order dated 02.03.2013, had been set aside by the Hon'ble High Court and thus, it was necessary to decide the civil suit (Annexure P-3). In the impugned order dated 28.11.2024, even the argument raised on behalf of the petitioner to the effect that the subsequent suit filed by the respondent(s) for injunction was dismissed on 09.12.2019, was taken into consideration and it was observed that although the Hon'ble High Court in the year 2015 had directed that either the subsequent suit could be withdrawn or there could be joint trial, the same was not possible as the subsequent suit had already been decided.



6. From the abovesaid facts, which are not disputed, it is clear that the order dated 02.03.2013 vide which the suit (Annexure P-3) was withdrawn with liberty to file a fresh suit, had been set aside by the Coordinate Bench of this Court and the effect of the same is that the earlier suit (Annexure P-3) is to proceed. Argument raised on behalf of the petitioner with respect to there being a subsequent suit for permanent injunction filed by the respondent(s) and the same having been dismissed cannot call for setting aside the impugned order dated 28.11.2024 or for not restoring the suit (Annexure P-3) as the same stands restored by virtue of the order passed by the Coordinate Bench of this Court on 19.05.2015 (Annexure P-12), which order has attained finality. Once the order dated 19.05.2015 was passed on the revision petition filed by the present petitioner, it was equally the duty of the petitioner as it was of the respondent(s) to have brought the same to the notice of the trial Court to restore the suit (Annexure P-3) so that a final judgment could be passed in the said suit. Thus, the argument raised on behalf of the petitioner to the effect that the application for restoration had been filed after a period of four years has no merit. Moreover, no law has been cited before this Court to show that on the said account, the order passed by the High Court dated 19.05.2015 is not required to be complied with.

7. The Hon'ble Supreme Court in the case of "***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil***", reported as ***(2010) 8 Supreme Court Cases 329***, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of



court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

8. Keeping in view the abovesaid facts and circumstances, the impugned order dated 28.11.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

28.03.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No