



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

(245)

**CR-6558-2024 (O&M)**  
Date of Decision:-**02.09.2025**

AMRIK SINGH

... Petitioner

Versus

LAKHWINDER SINGH AND ANOTHER

... Respondents

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**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present:- Mr. Vineet Soni, Advocate  
for the petitioner.

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**VIRINDER AGGARWAL, J.** (Oral)

1. The present revision petition is filed against impugning the order dated 09.09.2024 passed by the learned Additional District Judge, Fatehgarh Sahib, whereby the application filed by respondent No.1, praying for permission to withdraw the suit with liberty to institute a fresh suit on the same cause of action, was allowed. The petitioner challenges the legality and propriety of the said order.

2. The brief facts of the present case are that respondent No.1/plaintiff has instituted the suit seeking a declaratory decree, contending that the plaintiff and defendant No.2 are joint owners and in possession of the suit land, each entitled to an equal one-half share pursuant to an oral family settlement allegedly executed in the last week of January 2015. Alternatively, it is asserted that the parties are joint owners and possessors to the extent of one-third share each, the suit property being ancestral co-



parcenary property of a Joint Hindu family. The plaintiff further seeks the grant of permanent injunction restraining the defendants from alienating or creating any third-party interest in the suit land.

3. The suit was contested on merits by the petitioner/defendant No.1, who categorically asserted that the suit property was his self-acquired and exclusive property, and not co-parcenary property of a Joint Hindu Family. Respondent No.2/defendant No.2 was proceeded against ex-parte. Upon adjudication, the suit was dismissed by the learned Civil Judge (Junior Division), Fatehgarh Sahib, holding that the suit property did not constitute co-parcenary property and that neither the plaintiff nor defendant No.2 had any birthright therein. The Court further held that the petitioner/defendant No.1 was the absolute owner in possession of the suit land, to the exclusion of the plaintiff and defendant No.2.

3.1 Aggrieved thereby, respondent No.1/plaintiff preferred an appeal challenging the judgment and decree passed by the learned Trial Court. During the pendency of the appeal, the plaintiff filed an application under Order XXIII Rule 1 Code of Civil Procedure (in short 'CPC'), seeking permission to withdraw the suit with liberty to institute a fresh suit on the same cause of action. The said application was opposed by the petitioner; however, the learned Additional District Judge, Fatehgarh Sahib, allowed the application vide the impugned order, granting the requested liberty.

4. The impugned order is assailed on the ground that it is manifestly erroneous in law and unsustainable on the face of the record. It is submitted that the learned Trial Court, after a full-fledged adjudication, had decreed the suit in favour of the petitioner by holding that the suit property does not constitute ancestral or co-parcenary property of a Joint Hindu



Family, and that respondent No.1/plaintiff had no birthright or legal entitlement therein, having failed to establish his case either on facts or in law.

4.1 The learned First Appellate Court has failed to appreciate that the petitioner was compelled to undergo prolonged and arduous litigation spanning over eight years, which culminated in a well-reasoned and final adjudication in his favour. The impugned order, by allowing the withdrawal of the suit with liberty to institute fresh proceedings on the same cause of action under Order XXIII Rule 1 CPC, has effectively defeated the vested and crystallized rights of the petitioner flowing from the judgment and decree of the Trial Court.

4.2. Such a course not only defeats the principle of finality in litigation, but also results in serious prejudice to the petitioner, who is now exposed to the risk of fresh litigation on an already adjudicated matter. The impugned order, therefore, warrants interference in exercise of the revisional jurisdiction of this Hon'ble Court.

5. Notice of motion was duly issued and served upon the respondents; however, despite service, there was no appearance on their behalf at the time of hearing

6. Learned counsel for the petitioner contended that the impugned order is a non-speaking one and is legally unsustainable, as the learned Additional District Judge, Fatehgarh Sahib has failed to apply judicial mind to the facts and circumstances of the case. It is submitted that, by allowing the withdrawal of the suit, the Court has effectively permitted respondent No.1/plaintiff to defeat the vested rights that had accrued in favour of the petitioner pursuant to a reasoned judgment of the Trial Court.



5. I have given my thoughtful consideration to the submissions advanced by learned counsel for the petitioner and have meticulously examined the paper-book.

6. The learned Additional Sessions Judge has recorded its finding in para Nos.9 to 11 of the impugned order, which reads as under:-

9. 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, first 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. This becomes all the more important in a case where the application under Order 23 Rule 1 is filed by the plaintiff at the stage of appeal. Grant of leave in such a case would result in the unsuccessful plaintiff to avoid the decree or decrees against him and seek a fresh adjudication of the controversy on a clean slate. It may also result in the contesting defendant losing the advantage of adjudication of the dispute by the court or Courts below. Grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or



even a third party. The appellate/second appellate Court should apply its mind to the case. Reliance is placed on **Sant Baba Darshan Singh Sewak Baba Kharak Singh vs School Beerh Baba Budha Sahib and others reported in 2006 (2) RCR (Civil) 160.**

10. In legal terms, not joining a necessary party to a lawsuit can be valid ground to withdraw a suitcase, as a court cannot effectively adjudicate a matter without all essential parties present, if a necessary party is missing, the suit could be thrown out. The citations **Bawa Singh and others vs Smt. Tej Kaur alias Nachhatar Kaur and Vinod Kumar vs Gurdev Singh and others (supra)** are not directly applicable to the facts of the present case.

7. A perusal of the impugned order reveals that although the learned Additional District Judge was cognizant of the legal principles governing withdrawal of suits under the relevant provisions of the CPC, the order suffers from a fundamental infirmity. The Court, while exercising such discretion, is under a duty to consider all relevant aspects of the matter, including the desirability or consequence of allowing the parties to initiate a fresh round of litigation on the same cause of action.

7.1 It is well settled that such withdrawal, if permitted mechanically, may result in depriving the contesting defendant of the benefit of a fully adjudicated dispute by the Court(s) below, and may lead to the nullification of rights vested in the defendant or even in a third party. Therefore, it is incumbent upon the Appellate Court to apply its judicial mind to the facts and circumstances of the individual case, and not merely restate the general legal position.

7.2 However, in the present case, the learned Additional District Judge has allowed the application without any discussion on the specific



factual matrix of the case in hand, and has relied solely on the legal position in the abstract. The impugned order, thus, is virtually non-speaking, and reflects a failure to exercise jurisdiction in accordance with law.

7.3 In view of the above, the revision petition is allowed. The impugned order dated 09.09.2024 is hereby set aside, and the matter is remanded to the learned Additional District Judge, Fatehgarh Sahib, with a direction to consider and dispose of the application filed by respondent No.1/plaintiff afresh, by passing a reasoned and speaking order, after affording due opportunity to all concerned.

8. However, observations made herein above may not to be construed as opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

9. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

**02.09.2025**  
Gaurav Sorot

**( VIRINDER AGGARWAL )**  
**JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No