
(8) Even though the learned counsel appearing for the parties have addressed us on the applicability of equitable estoppel but inasmuch as on the first point that has been noticed above, we are inclined to grant the desired relief to the petitioner, we need not go into this question in details and leave it by simply observing that the counsel for the petitioner has relied upon "*The Union of India and others v. M/s Anglo Afghan Agencies etc.* (3) and *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others*" (4), whereas, the counsel appearing for the Administration has relied upon *Vasant Kumar Radhakrisan Vora v. The Board of Trustees of the Port of Bombay* (5).

(9) For the reasons stated above, this petition succeeds. The order Annexure P1 and notice Annexure P2 are quashed and the writ petition is allowed. Parties are, however, left to bear their own costs.

R.N.R.

Before : Ashok Bhan, J.

SURJAN SINGH AND OTHERS,—Petitioner.

versus

AMARJIT SINGH AND OTHERS,—Respondents.

Civil Revision No. 412 of 1992.

May 27, 1992.

Code of Civil Procedure (V of 1908)—Order 23-Rule-1. Statement of plaintiffs counsel seeking permission to withdraw suits to institute another on same cause of action—Statement to be read as a whole—Permission to file fresh suit on same cause of action and permission to withdraw integral part of request made to Court—Court may refuse permission to withdraw—Not open to Court to split statement i.e. to allow withdrawal of suit without granting permission to file a fresh one.

Held, that the statement made by the learned counsel for the plaintiffs had to be read as a whole and the same could not be split up. Permission to file a fresh suit on the same cause of action and

(3) A.I.R. 1968 S.C. 718.

(4) A.I.R. 1979 S.C. 621.

(5) A.I.R. 1991 S.C. 14.

the permission granted for withdrawal of the suit was integral part of the request made to the Court. In these circumstances, the Court is to permit withdrawal of the suit coupled with the liberty to file a fresh suit. The Court in the given case brought before it may refused to grant permission to withdraw the suit, but it is not open to the Court to split up the statement into two parts, i.e. permission to withdraw the suit, but without adverting to the other request of the plaintiffs for permission to file a fresh suit on the same cause of action.

(Para 7)

Petition under Section 115 CPC for revision of the order of the Court of Shri Gurdev Singh, Addl. District Judge, Amritsar dated 26th November, 1991 affirming that of Shri J. S. Chawla, PCS, Sub Judge, 1st Class, Amritsar dated 7th November, 1989 dismissing the suit of the plaintiff with no order as to costs.

Claim :—Suit for declaration.

Claim in Revision :—For reversal of the order of both the courts below.

Navkiran Singh, Advocate, for the Petitioner.

Prem Jit Kalia, Advocate, for the Respondent.

ORDER

Ashok Bhan, J.

(1) Present revision petition has been filed by the plaintiff-petitioners (hereinafter referred to as the plaintiffs). The facts giving rise to the petition are as under :—

(2) Plaintiffs filed a suit for declaration, to the effect that they are the sole heirs of one Mehar Singh, now deceased, their real brother, who died widowless and issueless and that the order dated 29th January, 1988 passed by Shri H. S. Pawar, Collector, Amritsar, in favour of defendant No. 1 regarding the estate of Mehar Singh deceased was null and void and ineffective *qua* the right of inheritance of the plaintiffs pertaining to the estate of Mehar Singh deceased coupled with permanent injunction restraining defendant No. 1 from transferring any part of the property owned and possessed by Mehar Singh on the basis of the order dated 29th January, 1988 in mutation No. 210, pertaining to the inheritance of Mehar Singh deceased.

(3) Before the injunction as prayed for was granted in favour of the plaintiffs restraining the defendants from transferring the

property in dispute, the defendants sold the property. The learned counsel appearing for the plaintiffs under these circumstances made a statement that in view of the fact that the sale-deed had been executed in respect of the suit land, as such the nature of the suit had changed, and, therefore, he be allowed to withdraw the suit with permission to file fresh one on the same cause of action. On this statement having been made by him, the trial court passed the following order :—

“Heard. In view of the statement of learned counsel for the plaintiffs, the suit is dismissed as withdrawn with no order as to costs. File be consigned.”.

(4) Since the trial court dismissed the suit as withdrawn without permission to file a fresh suit on the same cause of action, the plaintiffs filed an appeal before the first Appellate Court. The first Appellate Court dismissed the appeal as not maintainable because no decree has been passed in favour or against either of the parties. The impugned order before the first appellate Court was not a decree but was only an order and, thus, no appeal was maintainable.

(5) Aggrieved against the order of the trial court dismissing the suit as withdrawn on the statement of the counsel without permission to file a fresh suit on the same cause of action as well as against the order of the Additional District Judge dismissing the appeal as not maintainable, the present revision has been filed.

(6) Learned counsel for the petitioners at the very outset conceded the position that in fact no appeal was maintainable and prayed that the present revision be treated against the order of the Sub Judge 1st Class dated 7th November, 1989 and the delay in filing the revision petition be condoned as the plaintiffs under the *bona fide* belief were pursuing their remedy before the first Appellate Court. I find substance in the submission of the learned counsel for the petitioners. The delay, if any, in filing the revision petition at a belated stage is condoned as the plaintiffs were pursuing their remedy in a Court of law under a *bona fide* belief.

(7) Learned counsel for the petitioners contended that the statement of the counsel for the plaintiffs should have been taken into consideration as a whole by the Court and the same could not be split up into two parts, i.e. dismissing the suit as withdrawn on request, but not permitting them to file a fresh suit on the same

cause of action. The prayer for dismissal of the suit and permission to file a fresh suit on the same cause of action was an integral request, which had to be taken into consideration as a whole. For this proposition, he has relied upon a judgment of the Himachal Pradesh High Court, reported as *Hans Raj Akrot v. State of H.P.* (1). I find substance in the submission of the learned counsel for the plaintiff-petitioners. The statement made by the learned counsel for the plaintiffs had to be read as a whole and the same could not be split up. Permission to file a fresh suit on the same cause of action and the permission granted for withdrawal of the suit was integral part of the request made to the Court. In these circumstances, the Court is to permit withdrawal of the suit coupled with the liberty to file a fresh suit. The court in the given case brought before it may refused to grant permission to withdraw the suit, but it is not open to the Court to split up the statement into two parts, i.e. permission to withdraw the suit, but without adverting to the other request of the plaintiffs for permission to file a fresh suit on the same cause of action.

(8) For the aforementioned reasons, revision petition is accepted. Order of the trial court dated 7th November, 1989 is set aside and it be deemed that the suit of the plaintiffs was allowed to be withdrawn with permission to file fresh suit on the same cause of action. No order as to costs.

J.S.T.

Before : M. R. Agnihotri & N. K. Sodhi, JJ.

CHARANJIT SHARMA,—Petitioner.

versus

THE PANJAB UNIVERSITY CHANDIGARH AND
OTHERS,—Respondents.

Civil Writ Petition No. 237 of 1992.

28th February, 1992.

*Punjab University Calendar, Vol. II, 1988—Reg. 19, Page-14—
Unfair Means Case—Student disqualified from appearing in any
University examination for three years ending 1991—Examination*

(1) 2 C.L.J. (C, Cr, & Rev.) 583,