

Jagmohan Singh Vs. Harmohan Singh Paul and Others

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Court : Punjab and Haryana

Decided On : Feb-19-2014

Appellant : Jagmohan Singh

Respondent : Harmohan Singh Paul and Others

Judgement :

Civil Revision No.5180 of 2012 (O&M) 1 In the High Court of Punjab and Haryana at Chandigarh 219 Civil Revision No.5180 of 2012 (O&M) Date of decision: 19.2.2014 Jagmohan Singhpetitioner Versus Harmohan Singh Paul and othersRespondents CORAM: HON'BLE MRS.JUSTICE SABINA Present: Mr.Yogesh Chaudhary, Advocate for the petitioner.

Mr.Arvind Mittal, Advocate, for the respondent No.1.

None for respondent No.2.

Mr.Hardeep Singh, Advocate, for Mr.G.S.Sidhu, Advocate for respondents No.4 and 5.

**** SABINA, J.

This petition has been filed challenging order dated 26.7.2012 (Annexure P-7).whereby, application moved by the petitioner for permission to withdraw the suit with liberty to file a fresh one was dismissed.

Learned counsel for the petitioner has submitted that petitioner had filed a suit for permanent injunction restraining the defendants from interfering in the right of irrigation of the petitioner and from creating any type of hindrance in irrigation of the suit land.

Devi Anita 2014.02.26 12:39 I am approving this document Chandigarh Civil Revision No.5180 of 2012 (O&M) 2 During the pendency of the suit, it had transpired that tubewell number had been changed.

Therefore, it was very necessary to withdraw the suit in question and file a fresh one by giving correct account number and by impleading heirs of Brij Mohan.

Learned Counsel for respondents No.1, 4 and 5, on the other hand, have opposed the petition and have submitted that petitioner could very well amend the plaint and implead the necessary parties instead of withdrawing the suit in question.

Order 23 Rule 1 (3) reads as under:- 1.Withdrawal of suit or abandonment of part of claim.- (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, 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.

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Para 3 and 4 of the application moved by the petitioner under Order 23 Rule 1 and Sub Rule 3 of the Code of Civil Procedure, 1908 (CPC for short) read as under:- 3.

That however, while filing the present suit the account number of the Tube-well installed in the suit land; which Devi Anita falls in the area of Bet, was mentioned as T3C-31 (AP- 2014.02.26 12:39 I am approving this document Chandigarh Civil Revision No.5180 of 2012 (O&M) 3 16/531).in the head note & also in the prayer clause of the plaint.

And whereas the account number of the Tube- well installed in the joint land of the parties situated in the area of Daha, was mentioned as T3C-32 (AP-42/14).in para no.4 of the plaint.

But now, from the information supplied by the Electricity Board under the R.T.I.Act, 2005, vide their letter dated 19.01.2012, it has been revealed that in fact that account number of the Tube-well installed in the Bet land is T3C-32 (AP-42/14) and while tile Tube-well account No.T3C-31 (AP16531) mentioned in head note & prayer clause of the plaint, is in fact installed in the Daha land.

Further, now after this information, even the number of the Tube-well has also been corrected on the poles at the spot; i.e.in the Bet land the Tube-well number mentioned on the pole has been changed from T3C-31 to T332 and similarly in the Daha land also the number mentioned on the pole has been changed from T3 C-32 to T3C-31.

(The copy of this information now supplied by the Electricity Board on dated 19.01.2012 is also being attached herewith).4.

That thus, now in view of this latest development it has become very necessary to withdraw the present suit and to file the fresh suit for the same relief, by giving the correct account number of the Tube-well installed in the suit land and by also impleading the heirs of Sh.

Brij Devi Anita Mohan Singh (now deceased) by whom this Tube-well 2014.02.26 12:39 I am approving this document Chandigarh Civil Revision No.5180 of 2012 (O&M) 4 connection No.T3 C-32 was got installed for the irrigation of his share.

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Thus, in the present case, during the pendency of the suit, it transpired that there was change in the tubewell numbeRs.Consequently, the heirs of Brij Mohan Singh were also to be impleaded as a party.

The suit is at an initial stage.

Hence, at this stage, it was in the interest of justice to allow the petitioner to withdraw his suit and file a fresh one by giving correct facts and impleading the necessary parties.

No prejudice will be caused to any of the parties.

The Court had ample power to allow withdrawal of the suit with permission to the plaintiff to file a fresh one when there are sufficient grounds in this regard.

In the present case, in view of the submissions made in para Nos.3 and 4 of the application under Order 23 Rule 1 (3) reproduced above, there were sufficient grounds to allow the application.

Accordingly, this petition is allowed.

Impugned order dated 26.7.2012 (Annexure P-7) is set aside.

Consequently, the suit of the plaintiff is ordered to be dismissed as withdrawn with liberty to file a fresh one on the same cause of action.

(SABINA) JUDGE February 19, 2014 anita Devi Anita 2014.02.26 12:39 I am approving this document Chandigarh

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