

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

CIVIL REVISION No.60 of 2020

BETWEEN:-

**TRILOCHANSINGH S/O AMRIKSINGH KHANUJA,
AGED ABOUT 62 YEARS, OCCUPATION: BUSINESS,
271, AB ROAD DEWAS (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SAMEER ANANT ATHAWALE - ADVOCATE)

AND

**INDRAJEET KAUR W/O BHUPENDRASINGH,
AGED ABOUT 63 YEARS, OCCUPATION: BUSINESS,
124, SADASHIV NAGAR, CIVIL LINES DEWAS
(MADHYA PRADESH)**

.....RESPONDENT

(BY MS. MEENA CHAPEKAR - ADVOCATE)

ORDER

(PASSED ON 21/12/2022)

1. This Revision under Section 115 of the Code of Civil Procedure has been preferred by the applicant/plaintiff against the

order dated 23.01.2022 passed in Civil Suit No.88-A/2015 by the VIth Civil Judge, Class-I, District Dewas whereby his application under Order 23 Rule 1 and 3 of the CPC for withdrawal of the suit with liberty to file a fresh suit has been rejected.

2. The facts of the case are that plaintiff instituted an action on or about 14.09.2015 against the defendant for declaration of his half share in the suit lands, for mandatory injunction directing the defendant to remove his construction from over his share in the suit land and for permanent injunction restraining the defendant from making any construction in the future or alienating the suit land in any manner. Upon service of summons upon her the defendant has contested the plaintiff's claim by filing her written statement on 21.06.2016.

3. During course of proceedings before the trial Court the plaintiff filed an application under Order 23 Rule 1 and 3 of the CPC for withdrawal of the suit with liberty to institute a fresh suit on the same facts and cause of action. The plaintiff submitted that only affidavits in evidence of witnesses have been filed and their cross-examination has not begun as yet and that pleadings in the plaint have not been made properly since plaintiff was not aware of the legal requirements hence could not give the entire information to his counsel at the time of filing of the suit. Certain relevant documents which throw a great

deal of light on the dispute also could not be filed because plaintiff could not understand their relavance and importance. The pleadings as regards the documents filed along with the plaint have also not been made. For correcting the pleadings the plaintiff has made applications from time to time for amendment of the plaint which have been rejected. Certain documents filed subsequently by plaintiff have also not been taken on record. It was hence submitted that due to absence of necessary pleadings and the documents the suit is bound to fail hence plaintiff be permitted to withdraw the suit with liberty to institute a fresh suit on the same cause of action upon making the relevant pleadings and filing necessary documents. The defendant contested the application by filing reply to the same. The application has been rejected by the trial Court by observing that the grounds as have been taken by the plaintiff in the application are not sufficient for permitting withdrawal of the suit and granting liberty to him as prayed for.

4. Learned counsel for the plaintiff submits that the trial Court has committed a gross error of law in rejecting the application filed by the plaintiff. The plaintiff was not aware of the legal requirements and procedures and could not make necessary pleadings in the plaint at the time of its filing and also could not bring on record the documents relevant for the case. Though certain documents have

been filed along with the plaint but pleadings in that regard have not been made. Subsequent applications filed by plaintiff for amendment of the plaint and for taking additional documents on record have been rejected. The suit is hence likely to fail on account of such absence of pleadings and documents hence there was sufficient ground for allowing the plaintiff to withdraw the suit with liberty to institute a fresh suit as prayed for. Reliance has been placed by him on the decision of the Hon'ble Supreme Court in **V. Rajendran and Another V/s. Annasamy Pandian (dead) through LRs Karthyayani Natchiar (2017) 5 SCC 63.**

5. Per contra learned counsel for the defendant has submitted that the suit was instituted by the plaintiff in the year 2015. Since then several applications have been filed by him for amendment of the plaint and for taking documents on record. The case has been fixed since a long time for recording of evidence of plaintiff but he is avoiding to do so and is himself prolonging the matter on one pretext or the other. The grounds taken by plaintiff in his application were not sufficient grounds for allowing him to withdraw the suit and institute a fresh suit hence his application has rightly been rejected by the trial Court in which no interference is called for.

6. I have heard the learned counsel for the parties and have perused the record.

7. The question for consideration is as to whether the grounds taken by the plaintiff in his application i.e. failure to make necessary pleadings in the plaint and not filing the relevant documents along with it and not making the pleadings in respect of the documents filed along with the plaint can be said to be sufficient grounds for allowing him to withdraw the suit with liberty to institute a fresh suit for the subject matter of present suit. The plaintiff has contended that while filing the suit, due to his ignorance and lack of legal knowledge he could not make the necessary averments in the plaint as he could not furnish the detailed facts to his counsel nor could file the relevant documents. In respect of material documents filed by him necessary pleadings could not be made in the plaint. He made applications for amendment of the plaint and for taking documents on record which have been rejected by the trial Court.

8. Though the suit has been instituted in the year 2016 but presently only the affidavits in evidence of plaintiff and his witnesses have been filed and their cross-examination has not begun. Thus the actual trial of the suit has not started and no right has been created in favour of the defendant which can be withdrawn by the plaintiff. The proceedings have not reached a stage where it can be said that withdrawal of the suit would have any prejudicial effect upon rights of the defendant. The plaintiff may have been negligent towards

prosecution of his suit but the same was in respect of his pleadings and filing of documents. The proceedings of the case do not show that the plaintiff has been so negligent in prosecution of his case that he may be castigated to be such a litigant that his rights for a fair trial ought to be denied to him. The suit cannot be said to have reached such a stage where its withdrawal would permit the plaintiff to thwart any finding which may be imminently recorded against him. If plaintiff is forced to continue with his present suit it would amount to shutting out a fair trial on merits and punish him for errors made by him in good faith which can only be effectively set right by permitting him to institute a fresh suit.

9. There has not been any decision on merits in the case in any manner. It is not a case where plaintiff has already led his evidence and wants to withdraw the suit since he wants to come with body of fresh evidence to put forth his case. The stage of the suit is not where witnesses of plaintiff have failed to support his case and he wants to obtain an opportunity to commence the trial afresh in order to avoid the result of his previous bad conduct so as to prejudice the opposite party. Thus in my opinion the reasons given by the plaintiff in his application for seeking leave to withdraw the suit with liberty to institute a fresh suit would constitute "sufficient grounds" as contemplated under Order 23 Rule 1(3)(b) of the CPC.

10. The trial Court hence ought to have permitted the plaintiff to withdraw the suit and granted him liberty to institute a fresh suit as sought for by him. In not doing so it has failed to exercise jurisdiction vested in it. The impugned order thus cannot be sustained and is hereby set aside. The application under Order 23 Rule 1 & 3 of the CPC filed by the plaintiff is hence allowed and he is permitted to institute a fresh suit with the liberty as sought for by him. The Revision is accordingly allowed.

(PRANAY VERMA)
JUDGE

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