

RAJASTHAN HIGH COURT

Mahadeoji Chanreswarji

Vs.

State of Rajasthan

S.B. Civil Revision Petition No. 1354 of 2001

(Dr. B.S. Chauhan, J.)

18.03.2002

JUDGMENT

Dr. B.S. Chauhan, J.

1. The instant revision has been filed against the order dated 12.11.2001, by which the application filed by the revisionist under Order 23 Rule 1(3) of the Civil Procedure Code, 1908 (for short, "the Code") for giving permission to the petitioner to withdraw the suit with liberty to file a fresh if the need be arisen, has been rejected.

2. In respect of the property in dispute, the Estate Officer, in exercise of its power under the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1965 (for short, "the Act, 1965"), passed the order. The said order was challenged in appeal and the learned District Judge allowed the appeal of the present revisionist vide order dated 14.7.1992 directing the respondents not to evict the petitioner. Being aggrieved and dissatisfied, respondents filed a writ petition before this Court challenging the order dated 14.7.1992, which stood dismissed vide judgment and order dated 11.1.2000. Petitioner had also filed a suit for declaration and injunction in 1976 which was dismissed by the trial Court vide judgment and order dated 1.6.1996. Being aggrieved and dissatisfied, petitioner preferred appeal against the said order and in that appeal, petitioner filed an application under Order 23 Rule 1(3) of the Code to permit him to withdraw the suit with liberty to file a fresh if need be arisen, which has been rejected for not showing the "sufficient grounds." Hence this revision.

3. Mr. A.L. Chopra, learned Counsel for petitioner, has submitted that once petitioner had succeeded before the Appellate Court and the order of the Estate Officer to evict him under the provisions of the Act, 1965 has been set-aside and the writ petition against the same has been dismissed by this Court and as there is no apprehension at

this stage for the petitioner of being evicted, the appellate court has committed an error in exercise of its jurisdiction not allowing the petitioner to withdraw the suit with liberty to file a fresh in case the need be arisen. On the contrary, Mr. Kailash Joshi, learned Counsel for respondents, has submitted that the appeal has been allowed under the Act, 1965 on 14.7.1992 and the suit filed in 1976 was decided on 1.6.1996; the appeal was pending since then, therefore there was no "sufficient ground" shown by the petitioner to withdraw the same with liberty to file a fresh if need be arisen, hence this Court should not interfere with the order in its limited revisional jurisdiction under Section 115 of the Code.

4. I have considered the rival submissions made by the learned counsel for the parties and perused the record.

5. The aforesaid provisions of the Code provide for the privilege to the plaintiff to withdraw the suit at any stage as there is no provision to force him to continue with the litigation. However, in certain circumstances at the most, costs etc. may be imposed upon him. The suit can be withdrawn even at appellate stage and the Appellate Court may allow the withdrawal under Order 23 Rule 1(3) even where the suit had been dismissed by the trial Court. (Vide *Afjal Begum v. Akhari Khanam*, ¹ *Kamta Prasad v. Gaya Prasad*, ² and *Surajpal Singh v. Gharam Singh & Ors.*, ³

6. In *Bhagabat Jena & ors. v. Goverdhan Patnaik*, ⁴ the Court held that a suit can be withdrawn at any stage, but that right is limited to the extent that it does not result in defeating the right which has already vested in the defendant. This is so, for the reason that the object of the aforesaid provision is not to enable the plaintiff, after the rights of the parties have been adjudicated, to obtain an opportunity of commencing a fresh litigation in order to avoid the result of his previous suit. Similar view has been reiterated in *Ammini Kutty & ors. v. George Abraham*, ⁵

7. In *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior*, ⁶ the Hon'ble Supreme Court explained the scope of the provision observing as under :

"The law confers upon a man no right or benefit which he does not deserve. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason, the Court insisted that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Sub-rule (3) of R. 1 of Order 23.. The principle underlying the above rule is that of public policy, but it is not the same

as rule of res-judicata contained in Section 11 of the Code....."

In *Homeo Dr. T.K. Prabhawati v. C.P., Kunhathabi Umma & Ors.*, ⁷ the Court distinguished the provisions of Clauses (a) and (b) of R. 1(3) of Order 23 observing that they are not analogous or *ejusdem generis* and for attracting the provisions of Sub-clause (b), the applicant must satisfy the Court that there are sufficient grounds for withdrawal of the suit. The object of the rule is to enable a party to cover up all his omissions and failures and attempt a second suit on the same cause of action in order to avoid the result of all failures, but the rule is equally intended to ensure that a fair trial of suit on merit is not shut out because of a *bona fide* error or omission which cannot be cured in the same proceeding. Sub-clause (b) has been inserted conferring the powers on the Court to pass appropriate order, allowing the withdrawal only to advance the cause of justice.

8. In *Aiya Gaunden v. Goppnna*, ⁸ the Court held that whatever may be the interpretation of "sufficient grounds", application must be decided applying all judicial norms.

9. In *Abdul Ghafoor v. Abdul Rahman*, ⁹ the Full Bench of Allahabad High Court held that the sufficient grounds mentioned in Clause (b) are analogous to the grounds taken in Clause (a), but at the same time it held that in principle, interference in revision and the circumstances under which the application under Section 115 against an order of permitting withdrawal or refusing withdrawal of a suit, would depend upon the facts of each case.

10. In *Geeta Bose & Anr. v. Machine Tools of India Ltd.*, ¹⁰ the Calcutta High Court held that there can be no reason as to why the import and amplitude general words "sufficient grounds" in R. 1(3)(b) of Order 23 should suffer any unwarranted confinement. Therefore, if a suit has been filed on a particular ground and plaintiff wants to withdraw it with permission to file a fresh, he can file a fresh suit on the same grounds as well as on all other grounds which may be available to him at the time of filing the fresh suit and in such a case, permission should be granted.

11. In *Smt. Sura Bala Kar & ors. v. Yasin Mia*, ¹¹ the Court held that when a preliminary decree has been passed in the suit after a long trial, permission for withdrawal should not be granted, nor mere volume of work involved in the suit can be a ground for taking recourse to Clause (b) of Sub-rule (2), particularly when the application is opposed by the other party, nor application for withdrawal should be granted on imaginary ground or anxiety of the party to get rid of the old suit. "Sub-rule

(2) evidently has not been enacted to serve the purpose of drop-scene respective vexatious and inconvenient suits."

12. In *M/s. Hulas Rai Baijnath v. Firm K.B. Bass & Co.*,¹² the Hon'ble Supreme Court held that in a suit for rendition of accounts by principal against his agent, the principal is entitled to withdraw the suit even at the stage when issues had been framed and some evidence has been recorded, but no preliminary decree has been passed for rendition of accounts. The language of Order 23 Rule 1(3) provides for unqualified right of plaintiff to withdraw a suit and if any permission to file a fresh suit is sought under Sub-rule (2), the plaintiff is liable for such course as the Court may award and becomes precluded from instituting any fresh suit in respect of the subject matter under sub-rule (3) of that rule.

13. In *Debi Chand v. Prabhu Lal*,¹³ the Allahabad High Court held that once there has been a preliminary decree for rendition of accounts, if the plaintiff desires to withdraw his original claim for rendition of accounts but the defendant desires the case to proceed the proper course is not to allow the plaintiff to withdraw the suit. Moreso, even if the case falls under Clause (a) or (b) of Sub-rule (2) of Order 23, the Court has the discretion to either allow the prayer for withdrawal or reject the same in the background of all the relevant facts and circumstances and if the case remains pending for several years and party has expended enough of labour and expenses for fighting out the suit, permission for withdrawal with liberty to file a fresh should not be granted.

14. In *Kancherla Sarveswara Rao & ors. v. Kancherla Veerraju & ors.*,¹⁴ it was held that whether sufficient grounds contained in Clause (b) of Clause (2) of Order 23 is to be analogous to the grounds mentioned in Clause (a), is immaterial for the reason that there will be no difficulty in actual practicing between the cases to which the rule could be applied and those which are beyond the remedial operation.

15. In *Duryodhan Jena v. Satyabadi Samal & ors.*,¹⁵ the Court held that undoubtedly, the term "sufficient ground" has to be given a wide connotation and not a restrictively. However, it is the judicial discretion of the Court to consider whether the grounds stated by the plaintiff should be accepted as sufficient to permit him to file a fresh suit after removing the defect in the suit pending before the Court. However, that contained a case under Clause (a) of Sub-rule (2) of Order 23. Therefore, it is the ground stated by the plaintiff in the application under Order 23 Rule 1(3) of the Code which has to be adjudged for grant of permission to file a fresh suit.

16. In view of the above, the legal position can be summarised that the provisions of Order 23 Rule 1 of the Code are based on public policy not to give an opportunity to a litigant to abuse the process of the court. However, in certain circumstances, he can be permitted to withdraw the suit with liberty to file a fresh only in case of the "sufficient grounds" as mentioned in clause (a) or (b) of Sub-rule (2) of Order 23. The suit can be withdrawn even at the appellate stage but it is not permissible for a litigant to defeat the accrued right of the other party by withdrawing the suit. The court has been conferred discretion to permit a litigant to withdraw the suit only if "sufficient ground" is shown warranting such a permission.

17. The instant case requires to be considered in the light of the aforesaid settled legal proposition.

18. It is settled legal proposition that the title cannot be decided in summary proceedings and for redressal of that grievance civil suit is the only remedy (Vide *Government of Andhra Pradesh v. Thummala Krishna Rao*,¹⁶ *State of Rajasthan v. Padmawati Devi*,¹⁷ and *Mohammed Yunus v. Urban Improvement Trust, Jodhpur*),¹⁸ Therefore, what has been decided by this Court earlier under the Act, 1965 does not decide the title in favour of the present petitioner. The suit had been filed for declaration of title and grant of injunction not to interfere with the peaceful possession of the petitioner by the respondents. Till today, there is no declaration of title in favor of the petitioner. A decision in the summary proceedings does not amount to declaration in his favor.

19. The application has been filed on the ground that in respect of the suit property a notice dated 1.4.1997 under the provisions of the Act, 1965 was served and the matter ultimately stood finalized by the order of this Court and the relief claimed in the suit had already been granted to the plaintiff, therefore, he may be permitted to withdraw the suit with liberty to file the same if need be arisen. I am of the considered opinion that the application was totally misleading. There was no formal defect on the basis of which the suit was sought to be withdrawn with liberty to file a fresh. Moreover, the relief claimed in the suit had not been granted in any collateral proceeding in favor of the plaintiff. The suit for declaration has been filed and the trial Court has rightly held that there was no "sufficient ground" shown for permission to withdraw it with a liberty to file a fresh.

20. The Court should not lose sight of the fact that the suit was filed by the petitioner on 28.5.1976. It was dismissed by the trial Court on 1.6.1996. The appeal was

preferred and application for withdrawal was filed in the year 2001. Therefore, a litigation which remained pending for a quarter century and wherein the parties stood exhausted of their resources and energy in fighting the case, the suit had been dismissed vide judgment and order dated 1.6.1996, it would be a real hardship to the opposite party if it is left to face another order (ordeal ?) of litigation permitting the petitioner to withdraw this litigation after expiry of about two and half decades and bring another one, forcing the another party to face trial just at the fency of the petitioner

The revision is dismissed with costs, which is quantified at Rs. Five Hundred.

Petition dismissed.

Cases Referred.

1. AIR 1915 All 123
2. AIR 1972 All 143
3. AIR 1973 All 466
4. AIR 1983 Ori50
5. AIR 1987 Ker 246
6. AIR 1987 SC 88
7. AIR 1981 Ker 170
8. AIR 1915 Mad 480
9. AIR 1951 All 845
10. AIR 1991 Cal 116
11. AIR 1971 Tri. 45
12. AIR 1968 SC 111
13. AIR 1926 Alla 582
14. AIR 1957 AP 303
15. AIR 1986 Ori 58
16. AIR 1982 SC 1081
17. AIR 1995 SC 290
18. AIR 1999 RAJ334