



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 33 of 2019
Decided on : 10.09.2025

Mangat Ram (deceased) through his Lrs. namely Tarsem Lal and others.

...Petitioners

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Surya Chauhan, Advocate.

For the respondents : Mr. Pushpinder Jaswal, Additional Advocate General, for respondent No.1.

Mr. Parmod Singh Thakur, Advocate, for respondents No.2 & 3.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner-plaintiff has assailed order dated 19.04.2018, passed by learned Civil Judge, Court No.II, Una, District Una, H.P., in terms whereof, an application filed by defendant No.2 before the learned Trial Court, under Order XXIII, Rule 3 of the Code of Civil Procedure

¹Whether reporters of the local papers may be allowed to see the judgment?

(hereinafter referred to as 'CPC'), seeking the dismissal of the suit filed by the plaintiff in light of comprise dated 30.09.2016 and the statement of the plaintiff recorded in the Court on 30.09.2016, was allowed.

2. Brief facts necessary for adjudication of this petition are that petitioner-plaintiff filed a suit for declaration, that he was the exclusive owner in possession of the suit property and the impugned alienation effected by defendant No.2 thereof, in favour of defendant No.1, vide registered sale deed dated 27.08.2012, was wrong, illegal, void ab-initio, with further consequential relief of permanent injunction, restraining the defendants from changing the nature and character etc. of the suit property.

3. During the pendency of this suit, on 30.09.2016, an application was filed, under Section 151 of the CPC, with the prayer that the case be taken up on the said date and for the withdrawal of the suit. Though this application is not on record, but copy thereof was made available for the perusal of the Court by learned counsel for the respondents. A perusal of this application demonstrates that the same is dated 30.09.2016

and it was mentioned therein that the case was listed in the Court on 09.12.2016 but as the matter stood amicably settled and the plaintiff was not interested in pursuing the suit and the application be allowed and the suit be taken up during the course of the day and be ordered to be dismissed as withdrawn. Thereafter, statement of the plaintiff was also recorded, by the Court on 30.09.2016, which reads as under:-

"Stated that I do not want to pursue the suit as the matter has been compromised. Suit may kindly be dismissed as withdrawn."

4. However, thereafter, before formal order of dismissal of the suit on the basis of the application and statement of the plaintiff could have been passed by the learned Trial Court, the plaintiff stated that he did not intend to withdraw the suit and in this backdrop that the application was filed by defendant No.2, for the dismissal of the suit, on the basis of the application filed by the plaintiff to withdraw the same, as well his statement recorded.

5. In terms of the impugned order, learned Trial Court has allowed the application and held that every plaintiff has the right to withdraw the suit unconditionally and withdrawal would

be complete, as soon as the plaintiff makes his statement and the withdrawal of the suit is not dependent upon the order of the Court. Learned Trial Court, thereafter, held that in view of the statement of the plaintiff on oath, recorded in the Court on 30.09.2016, the suit was dismissed, having been withdrawn. Learned Trial Court also allowed the application filed by defendant No.2.

6. Learned counsel for the petitioners submitted that the impugned order is per se not sustainable in the eyes of law, for the reason that when the petitioner-plaintiff, before the suit was formally dismissed as withdrawn by the learned Trial Court, expressed his intention to continue with the suit on merit, there was no occasion for the learned Trial Court to have allowed the application, filed by defendant No.2 and dismissed the suit as withdrawn. He submitted that learned Trial Court has erred in not appreciating that till the time, a formal order of withdrawal of the suit was not passed by the Court, the plaintiff had the right in law to pray that the case be decided on merit.

7. On the other hand, learned counsel for the private respondents argued that there is no infirmity in the impugned

order. He submitted that as soon as the application was filed by the plaintiff for withdrawal of the suit, the suit stood withdrawn and it was not as if the plaintiff had only filed an application, he also recorded his statement on oath to this effect, that he intended to withdraw the suit, which was duly recorded in the Court. He further submitted that the withdrawal of the suit in these circumstances was not dependent upon any formal order being passed by the Court, as withdrawal was complete as soon as the application was filed and the statement of the plaintiff to this effect was record. He further submitted that the order under challenge is based upon the judgment of the Hon'ble Supreme Court, which is referred in the impugned order, and therefore also, the same calls for no interference.

8. I have heard learned counsel for the parties and have also carefully gone through the impugned order as well as the other documents appended with the petition.

9. A perusal of the impugned order demonstrates that after the plaintiff filed an application before the Court on 30.09.2016, both for early hearing as well as for taking on record the fact that the matter stood compromise and the

plaintiff intended to withdraw the suit, the statement of the plaintiff to this effect was recorded by the Court. However, thereafter, the learned Court rather than passing an order on the said application of the plaintiff, fixed the matter before the learned Lok Adalat for 08.10.2016 and when the matter was listed before the learned Lok Adalat, none appeared and the matter was sent back to the regular Court for 30.12.2016. It is thereafter, when the matter was listed before the regular Court that the application filed by defendant No.2 for dismissal of the case, to which the plaintiff filed a reply and expressed his intention not to withdraw the suit.

10. This Court is of the considered view that though in terms of Order XXIII of the CPC, the plaintiff can at any time, after the institution of a suit, abandon his suit or abandon a part of his claim, however, this provision cannot be construed as if, in case, an application is filed by the plaintiff in terms of the provisions of Order XXIII, then straight away, the case file has to be assigned to the record room. Judicial order has to be passed by the Court concerned on the basis of either the statement of the plaintiff or the application filed by the plaintiff

and it is only after a formal order is passed by the Court that the application or the statement of the plaintiff comes into effect.

11. This Court is further of the view that looking into the facts of this case, as there was some time period in between the filing of the application at the first instance by the plaintiff as well as the recording of his statement, and passing of impugned order, which was on account of the act of the Court itself which in its wisdom, thought it proper to refer the matter to the learned Lok Adalat, thereafter, once the matter was not mutually settled before the learned Lok Adalat, because none appeared and the matter came back to the regular Court, then if the plaintiff had expressed his intent that he wanted to continue the case on merit, its natural consequence was that there was an implied withdrawal of the application as well as the statement made by the applicant and the Court was duty bound to decide the suit on merit.

12. It has to be appreciated that a Court of law is not at the same footing as the defendant in such like matters. Obviously, the defendant would like to take advantage of any such application filed by the plaintiff or statement made by the

plaintiff, but then the Court has to apply its judicial mind and has to take into consideration the fact that if the plaintiff who had filed such an application, subsequently wants the Court to decide the case on merit, the Court cannot shy away and shun its duty to decide the case on merit and hide behind such an application or statement made by the plaintiff and dismiss the case of the plaintiff without adjudication on merit, as has been done in the present case.

13. The provisions of Order XXIII of the CPC are to be voluntarily exercised by the plaintiff. The Court cannot force the plaintiff to withdraw a case, simply because at an earlier stage the plaintiff might have filed such an application or even may have recorded his or her statement to the effect that the plaintiff intends to withdraw the suit, if subsequently, the intent of the plaintiff changes for some reason. Of course, maybe during the course of the trial, an adverse inference can be drawn by the Trial Court of the said conduct of the plaintiff, but then this does not give a license to the Trial Court to dismiss the suit, as has been done in the present case. This Court does not agree with the observation of the learned Trial Court that dismissal is

complete with the filing of the application. If that is so, then why did learned Trial Court refer the matter to Lok Adalat.

14. Accordingly, in view of the above discussion, the petition is allowed. Order dated 19.04.2018, passed by learned Civil Judge, Court No.II, Una, District Una, H.P., is quashed and set aside. The matter is remanded back to the learned Trial Court for adjudication on merit. Parties through counsel are directed to appear before the learned Trial Court on **07.10.2025**. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

September 10, 2025
(Shivank Thakur)