

## REVISIONAL CIVIL

Before Prem Chand Pandit, J.

SHEO RAM,—Petitioner.

versus.

CHANDGI RAM ETC.,—Respondents.

Civil Revision No. 99 of 1971.

April 6, 1971.

*Code of Civil Procedure (Act V of 1908)—Order 23, rule 1—Plaintiff seeking adjournment to produce rebuttal evidence after the close of defendant's evidence—Evidence not produced and application for withdrawal of suit with permission to file fresh suit given—Such application—Whether should be allowed.*

*Held*, that where a plaintiff seeks adjournment to produce rebuttal evidence after the close of defendant's evidence, but instead of producing such evidence, gives an application for withdrawal of the suit with permission to bring a fresh suit on the same cause of action, the application should not be allowed. Simply because the plaintiff cannot produce evidence in support of his case, does not afford a ground to him to move an application under Order 23, rule 1, Code of Civil Procedure, praying for the withdrawal of the suit with permission to file a fresh one on the same cause of action. In order to succeed, the plaintiff has to bring his case within the four corners of the provisions of Order 23, rule 1, of the Code. (Para 7).

*Petition under Section 115 C.P.C. for revision of the Order of Shri R. P. Bajaj, Sub-Judge II Class, Charkhi Dadri dated 19th November, 1970 granting the plaintiff's application for the withdrawal of suit with permission to bring a fresh one on the same cause of action.*

R. S. MITTAL, ADVOCATE, for the petitioner.

NEMO, for the respondents.

## JUDGMENT

PANDIT, J.—This is a defendant's revision petition against the order passed by the trial Judge granting the plaintiff's application for the withdrawal of his suit with permission to bring a fresh one on the same cause of action.

(2) Chandgi had brought a suit against his brothers Sheo Ram, Malha Ram and Sis Ram, for a declaration that he was the sole owner and in possession of agricultural land measuring 24 Bighas

and 10 Biswas situate in village Badesra, district Mohindergarh, and that the defendants had no concern or connection with the said land and further that the mutation effected by the Revenue Authorities in favour of all the brothers in equal shares was wrong and against law.

(3) The suit was brought in November, 1969. Both the plaintiff and the defendants had closed their evidence and the case was fixed for 10th November, 1970 for the evidence of the plaintiff in rebuttal. On that date, the plaintiff filed an application for producing additional evidence. This application was dismissed on the next day, that is, 11th November, 1970. The case was then fixed for 12th November, 1970, for the plaintiff's rebuttal evidence. On that date, the plaintiff filed an application for the withdrawal of the suit with permission to file a fresh one on the same cause of action. All that was stated in the said application was that the applicant was an illiterate person and he could not, therefore, adduce sufficient evidence in proof of his suit. Moreover, there were some technical defects in the suit.

(4) The application was contested by Sheo Ram, defendant. The same was, however, accepted by the trial Judge by means of the impugned order dated 19th November, 1970. Against this order, the present revision petition has been filed by Sheo Ram.

(5) In spite of service, nobody has appeared on behalf of the respondents.

(6) After going through the records of the case, I am of the view that this petition must be accepted. The learned Judge in the impugned order had stated :

"The necessity for this application arose because the earlier application by the plaintiff for leading additional evidence was rejected by this Court on 11th November, 1970. In that application, the plaintiff had sought to produce a document showing an admission by the defendant in his favour. That document was not taken into evidence as it was neither relied upon nor mentioned in the pleadings. According to the plaintiff, the said document has come to his notice at a late stage. These circumstances; in my view clearly make out a case in favour of the plaintiff and there

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is sufficient cause for giving him permission to file a fresh suit on the same cause of action. The injury caused to the defendant can very well be compensated by costs."

(7) After having observed this, the learned Judge accepted the application filed by the plaintiff, and permitted him to institute a fresh suit on the same cause of action on payment of Rs. 20 as costs. Simply because the plaintiff did not produce some evidence in support of his case, does not afford a ground to him to move an application under Order 23, rule 1, Code of Civil Procedure, praying for the withdrawal of the suit with permission to file a fresh one on the same cause of action. In order to succeed, the plaintiff had to bring his case within the four corners of the provisions of Order 23, rule 1, Code of Civil Procedure. The learned Judge, it appears, had not applied his mind to the said provisions.

(8) The revision petition is, accordingly, accepted and the impugned order quashed. Since the respondents are not represented before me; there will be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

AMARJIT SINGH—Petitioner.

versus

SAROJ MALIK—Respondent.

Civil Revision No. 1239 of 1970.

April 7, 1971.

*Arbitration Act (X of 1940)—Section 34—"A step in the proceedings in the suit."—Meaning of—Request by the defendant for adjournment to file written statement—Whether amounts to such a step—Code of Civil Procedure (Act V of 1908)—Order 5, Rule 2—Defendant served by substituted service by citation in a news-paper—Whether sufficient compliance with Order 5, Rule 2.*