

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 2750 of 2012 (O/M)  
Date of decision : 31.8.2015

Barkat Ali

..... Revisionist

Versus

Gurpreet Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.S. Kaura, Advocate, for the revisionist.

Mr. Dinesh Sharma, Advocate,  
for respondents No. 1 and 2.

Mr. Tarunvir Singh Lehal, Advocate, for respondent No. 4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH, J. (ORAL)

Impugned in the present revision is the order dated 28.2.2012 (Annexure-P-4), passed by the learned Additional District Judge, Fatehgarh Sahib, whereby the application of the present revisionist under Order 23 Rule 3 (3) of Code of Civil Procedure, 1908, ('CPC'), seeking permission to withdraw the appeal with liberty to file fresh suit on the same cause of action, was dismissed.

CR No. 2750 of 2012 (O/M)

Suffice to say that the plaintiff had filed a suit for specific performance, permanent injunction and in the alternative, for the relief of recovery. The lower Court decreed the suit for alternative relief of recovery. Against the said order, the plaintiff had preferred an appeal. It is stated in the application, that he had not given notice under Section 49 of the Municipal Act to the Municipal Committee/Council, Khamanon. Therefore, there is formal defect. However, the learned Additional District Judge has observed that the suit was not dismissed on account of said formal defect, but was decreed for the alternative relief after recording the findings on merits. Therefore, the alleged formal defect did not weigh in the mind of the lower Court. The application was accordingly dismissed.

In this case, the plaintiff has already paid the court fee and the findings on merits have been recorded. The suit was not dismissed, but decreed for alternative relief. It being so, there is no ground to interfere in the impugned order.

The present revision is accordingly dismissed.

(KULDIP SINGH)  
JUDGE

31.8.2015  
sjks