

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1369 of 2015
Date of decision:26.02.2015

Mohinder Singh & another

....Petitioners

Versus

Thakar Singh (deceased) th. LRs & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Jagjit Singh, Advocate, for the petitioners.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the plaintiff-petitioners, is to the order dated 27.01.2015 (Annexure P2), whereby the Civil Judge (Jr.Divn.) Kapurthala, has dismissed the application for amendment of the plaint. The reasoning given by the Trial Court is that earlier also, major amendments had been made and the power under Order 6 Rule 17 CPC, though being vast, cannot be exercised at the instance of the party as many times as he wishes. No valid justification having been given for amending the plaint at the stage when evidence of the parties was at the advanced stage and therefore, lacunas could not be permitted to be filled up.

A perusal of the paperbook would go on to show that the amendment which is sought was that the land was measuring 12 kanals 17 marlas and not 12 kanals 7 marlas and a correction was sought in the head-note as well as the prayer clause. The second amendment which was sought is regarding challenge to the sale deed dated 12.06.2009, executed by defendant-Thakar Singh, the father of the plaintiffs, which was in favour of defendant No.2, Balwinder Kaur, the daughter-in-law. The reasoning given was that Thakar Singh was not mentally fit

and was not able to think of his right and wrong and the plaintiff had inadvertently forgotten to challenge the sale deed.

The suit was filed on 06.03.2010 for permanent injunction and at that point of time, Thakar Singh was alive and at that point, the petitioners, who are the sons, did not allege, as such, about the infirmity of their father or his mental capacity. It was only after his death, the application has been filed alleging that he was not in a position to execute the sale deed. It is, thus, apparent that their right to challenge the sale deed was open at the time of filing the suit but the ground has been made on account of the death of their father. Even otherwise, the limitation to challenge the sale deed expired when the application was filed on 09.01.2015 and therefore, a vested right had accrued in favour of the defendants and the said application is not liable to be allowed on this ground also as the petitioners have chosen to sleep on their rights, if any. Thirdly, the Trial Court was right in rejecting the application since the trial had commenced and it has also been noticed that earlier application had also been filed for amendment but the present amendment was never incorporated. A perusal of the head-note of the suit would also go on to show that it was mentioned that the land was measuring 12 kanals 17 marlas and therefore, the averment made in the application for amendment is also not correct. In the prayer clause, only a typographical error is there and the Trial Court can always keep this fact into consideration since the details of the land have also been mentioned in the head-note. In such circumstances, the amendment application has been rightly dismissed.

Accordingly, finding no merit in the present revision petition, the same is, hereby, dismissed.

26.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE