

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.508 of 2015 (O&M)

Date of Decision: September 09, 2015

Malkiat Kaur & others

...Petitioners

Versus

Sohan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Rajiv Kataria, Advocate,
for the petitioners.

Mr.H.S.Saggu, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The challenge in the present civil revision is to the impugned order dated 28.7.2014 (Annexure P-5), whereby an application filed by the respondent-plaintiff for seeking amendment of the plaint challenging the sale deed dated 22.3.2011 has been allowed.

Mr.Rajiv Kataria, learned counsel appearing on behalf of petitioner-defendant Nos.1 & 4 to 6 submits that the amendment sought and allowed has totally altered the nature of the suit, much less, cause of action and, therefore, it could not have been allowed as the trial has already commenced.

Mr.H.S.Saggu, learned counsel appearing on behalf of the respondent-plaintiff submits that in paragraph 5 of the plaint, there is already a reference to the sale deed alleged to have been executed by Gurdev Singh in favour of defendant Nos.4 to 6 and, therefore, necessity has arisen to challenge the sale deed by seeking declaration and incorporation of the paragraph in this regard. Paragraph 5 of the unamended plaint reads thus:-

“That Gurdev Singh without any legal right executed a sale deed in favour of defendants no.4 to 6 on 22.3.2011. No possession was delivered to the defendants at the time of execution of the alleged sale deed dated 22.3.2011. Gurdev Singh got scribed wrong Khasra number and wrong boundaries in the sale deed dated 22.3.2011. Photostat copy of the sale deed dated 22.2.2011 is attached herewith.”

The submission is that the respondent-plaintiff was aware of the aforementioned sale deed, ought to have been incorporated in the suit filed on 25.4.2011. He submits that there is no illegality and perversity in the impugned order and the same is perfect, legal and justified.

I have heard the learned counsel for the parties and appraised the paper book.

In the application for amendment, as noticed in the impugned order, the plaintiff has sought to incorporate the following paragraphs:-

“7. Gurdev Singh son of Kapoor Singh s/o Lekh Singh resident of village Tibba, Tehsil Dhuri, District Sangrur.”

“B” Suit for decree of declaration to the effect that the sale deed dated 22.3.2011 executed by Gurdev Singh in favour of Malkiat Kaur defendant no.4, Kulwinder Kaur defendant no.5 and Riju Sharma defendant no.6, illegal, void and ineffective

qua the rights of the plaintiff as the plaintiff is the owner and in possession of the property in dispute”

“5-B That the defendant no.7 Gurdev Singh s/o Kapoor Singh resident of village Tibba without any legal right during the pendency of the suit titled as Sohan Singh vs. Gurdev Singh etc. executed the sale deed dated 22.3.2011 regarding the property of the plaintiff in favour of defendant no.4 to 6. The defendants have got no connection with the house and courtyard owned and possessed by the plaintiff. Under law no one can confer better title than one himself has, Gurdev Singh had no right to execute the sale deed regarding the property of the plaintiff. As such the sale deed dated 22.3.2011 do not confer any right upon the defendant no.4 to 6. Therefore, the sale deed dated 22.3.2011 is illegal, void, unwarranted by law and is liable to be set aside qua the rights of the plaintiff”

“and a fixed court fee of Rs.100/- is also affixed more on the plaint”

“and the sale deed dated 22.3.2011 executed by Gurdev Singh defendant no.7 in favour of defendant no.4 to 6 is illegal, void, unwarranted by law and may kindly be set aside qua the rights of the plaintiff.”

The amendment sought and incorporated, in my view, has not changed the cause of action, much less, nature of the suit as there is a reference to the sale deed dated 22.3.2011 alleged to have been executed by Gurdev Singh in favour of defendant Nos.4 to 6 in amended plaint. The amendment sought to be incorporated, as noticed above, is essential and necessary for the adjudication of the suit as in order to avoid multiplicity of litigation, the respondent-plaintiff would have to seek the alternative relief of declaration and permanent injunction.

In my view, the impugned order does not suffer from any

illegality and perversity as the case is still at the stage of plaintiff's evidence.

The plaintiff would be at liberty to lead evidence in support of the amendment and the defendants would have a right to cross-examine the witnesses and as well as raise objection to the veracity of the documents led in support of the evidence, if any. I do not find any illegality and perversity and the impugned order cannot be said to have been passed without jurisdiction.

There is no merit in the revision petition. The same is accordingly dismissed.

September 09, 2015
ramesh

(AMIT RAWAL)
JUDGE