

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5078 of 2013 (O&M)

Date of decision: 25.05.2015

Ravi and others

... Petitioners

versus

Reva Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikram Punia, Advocate for the petitioners.

Mr. Ashwani Gaur, Advocate for respondent Nos. 1-14.

K.Kannan, J.

The revision is against the order dismissing an application for amendment of the plaint brought by the plaintiff at the Appellate court. The suit had been filed for declaration of title and for the relief of injunction and the relief of incorporation of his name in the revenue records, and claiming under a purchase from one Mitra, daughter of Zehro. The said Mitra had staked her claim to the whole of the property as having been bequeathed to her by her mother. The suit was on a plea that the property had come to the hands of the purchaser and the property had been held by his vendor as an exclusive owner and that therefore he had acquired title to the whole of the property by adverse possession.

The plea of adverse possession became necessary for the plaintiff in view of the fact that Mitra's two sisters Dropadi and Tara claimed an equal share as on intestacy from their mother Zehro. They had themselves filed a suit for the year 1970 challenging the Will propounded by their sister and they were successful in their claim. The plaintiff had laid therefore the right to the whole of the property on the basis that notwithstanding the claim for equal shares by Dropadi and

Tara as own possession as a person claiming from Mitra was adverse to the sisters. The suit was dismissed holding inter alia that a declaratory relief by the plaintiff cannot be made on a plea of adverse possession. In the appeal therefore, the plaintiff sought to modify his claim by means of an amendment to contend in the alternative that he shall be declared to be the co-owner of the property along with the other co-owners. This application has been dismissed.

The issue of whether the plea of adverse possession would be barred by the plaintiff is not without a legal controversy. A Division Bench of this Court in Vijay Bhawar and others Vs. Ajai Singh (Deceased) through his LRs in RSA 2561 of 1985 decided on 08.12.2014. This Court had taken a decision that there is no such bar. The plaintiff has therefore been prepared to even alter his own case and scale down his demand not to have exclusive title but merely to a claim as a co-owner. Such a plea must be possible as an alternative relief and I find nothing inconsistent about such a plea that could cause any prejudice to the defendant. If at all, the defendant must be thankful to the plaintiff to scale down his own prayer to lesser relief instead of larger relief of declaration for the whole of the property.

The objection by the learned counsel appearing on behalf of the respondents inter alia was that the fact had been known already to the plaintiff about his status could be only as co-owner and not as an exclusive owner. Here is it not an issue of knowledge. On the other hand, it is an issue of what is legally competent and what the plaintiff had been stating as a principle under legal advice that such a plea was not possible. In my view it is grossly improper and unjustified to continue the plaintiff to secure at least even a lesser relief as a co-owner, if he could not establish his exclusive ownership over the whole of the property on the basis of adverse possession. The denial of such an amendment to the Appellate Authority was unjustified, for, I will find no scope for any additional evidence of such an amended plea. The Court shall only hear the arguments on the amendment as brought out

and if the defendants wants to file the amended written statement or additional written statement as contemplated under Order 8 Rule 9 CPC, it shall be perfectly competent for them to do so within a period of two weeks from the date of the order. If such a statement is filed, the Court will receive the same and will proceed to hear the arguments on appeal in its amended form with the additional pleadings and dispose of the appeal in accordance with law.

The impugned order is set aside and the civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

25.05.2015
kv