

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

**CM No.15656-CII of 2013 in/and
CR No.555 of 2012 (O&M)
Date of decision: 19.01.2015**

Bhupinder Singh

....Petitioner

Versus

Gurdev Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kanwal Goyal, Advocate for the petitioner.

Mr. Vivek Rattan, Advocate for the respondents.

Rakesh Kumar Jain, J. (Oral)

CM No.15656-CII of 2013

Application is allowed, documents are taken on record,
subject to all just exceptions.

CR No.555 of 2012

At the very outset, learned counsel for the petitioner has submitted that the challenge in this revision petition is only to the order dated 5.04.2011 by which an application filed by him for amendment of the plaint has been declined.

In brief, the petitioner is the plaintiff who has filed the suit for declaration to the effect that he is the joint owner in possession of 1/3rd share out of the land measuring 60 Bighas owned by his father on

the basis of an oral family settlement. It is also mentioned in the plaint that his father executed a registered transfer deed of land in favour of his brothers, i.e. respondents-defendants No.2 and 3, on 24.09.2009 to the extent of 20 Bighas each.

In the joint written statement filed by the defendants, they have denied the allegations of the plaintiff-petitioner that there was an oral family settlement between the parties. On the pleadings of the parties, issues were framed and the trial has commenced. Thereafter, the petitioner filed an application for amendment of the plaint in order to challenge the validity of transfer deed dated 24.09.2009 on the ground that his father could not have given specific khasra number to his brothers-defendants No.2 and 3 as all the brothers including the petitioner were entitled to 1/3rd share and the specific khasra number would have come to their share only after the partition.

The said application has been declined by the learned Civil Judge (Jr. Divn.), Dhuri, on the ground that the Court has not found the factum of due diligence and with the amendment sought by the plaintiff-petitioner, the nature of the suit would ultimately be changed.

Counsel for the petitioner has submitted that he has already filed a suit for declaration and the declaration being sought by way of amendment is only for challenging the contents of the registered transfer deed dated 24.09.2009 as his father had no right to transfer specific khasra number in favour of his brothers.

The heart burning of the petitioner is obvious. It is alleged that the khasra numbers given to the respondents-defendants No.1

and 2 by way of transfer deed are on the main road, and petitioner has been given the land on the back side. It is submitted that the nature of the suit is not going to be changed and in so far as the due diligence is concerned, it would have come into play only after the commencement of the trial.

Learned counsel for the respondents has relied upon the judgment of Hon'ble Supreme Court of India **Peethani Suryanarayana and another Vs. Repaka Venkata Ramana Kishore and others, 2009 (2) RCR (Civil) 521** to contend that the petitioner cannot be allowed to withdraw the admission made by him in the pleadings.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the petitioner is not withdrawing the admission with regard to the registered transfer deed as in the amendment of plaint, he is alleging that the registered transfer deed is there but his father could not have given specific khasra numbers to his brothers and thus it would not change the nature of the suit rather it would facilitate the parties for appreciating all the relevant issues which may ultimately crop up amongst them.

Accordingly, the order passed by the Court below is held to be erroneous and keeping in view the aforesaid facts and circumstances, the present revision petition is hereby allowed and the impugned order passed by the Court below is set aside.

January 19, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge