

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

Civil Revision No. 623 of 2014 (O&M)

Date of decision : 20.5.2015

Partap and another

... Petitioners

VS

Thana Ram and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ram Avtar Yadav, Advocate, for the petitioners.

Mr. Tanmoy Gupta, Advocate, for respondent no. 1.

Rajesh Bindal, J.

Defendant nos. 2 and 4 have challenged the order passed by the learned Court below whereby the application filed by them for framing of additional issues, was dismissed.

Briefly, the facts of the case as are available on record are that respondent no. 1/ plaintiff filed the suit for mandatory injunction seeking a direction against the defendants to hand over the vacant physical possession of plot no. 334, as detailed in the plaint. It was further prayed that the defendants be restrained from raising any construction on the plot in question and further if any construction has been raised, the same be removed.

After the entire evidence had been led by the parties and the case was fixed for rebuttal evidence, if any and for arguments, the application for framing of additional issues was filed by the petitioners/ defendant nos. 2 and 4, which was dismissed by the learned Court below. The order has been impugned in the present petition.

Learned counsel for the petitioners submitted that in the written statement filed by them, a specific stand had been taken that plot in question was sold in November, 1995, by respondent no. 1/ plaintiff to defendant no.

2 on receipt of ₹ 1 lac and even original letter of allotment and sale-deed was also handed over to them, hence, they were in possession thereof as owners. Despite a specific plea being there in the written statement, no issue regarding the same was framed. When it was noticed by the petitioners, the application was moved for framing of additional issues. The same has been wrongly rejected. The issues can be framed by the court at any stage, hence, delay as such does not matter.

On the other hand, learned counsel for respondent no. 1/ plaintiff submitted that the suit was filed on 25.2.2008 in which after the defendants filed their written statement, the issues were framed on 20.7.2009. Thereafter, the parties led their evidence and the case was fixed for arguments when the application dated 17.8.2011 in question was filed by the petitioners/ defendant nos. 2 and 4. The issues sought to be framed do not arise out of the pleadings. The petitioners were well aware of the stand taken by them in the written statement. But after the issues were framed, no objection was raised, not only at the time of framing thereof, but even till the date entire evidence of the parties was concluded. The application was filed only with a view to delay the proceedings so that defendants could remain in possession of the property. In fact, they had been successful in this process. No plea regarding the defendants being owner of the property on the ground of adverse possession was taken in the written statement filed. Even the plea claiming ownership on the ground that a sum of ₹ 1 lac was paid to respondent no. 1/ plaintiff and he had handed over the allotment letter to defendant no. 2, is also totally misconceived, as the title of immovable property cannot be transferred merely by handing over documents of title. There is no illegality in the order passed by the learned Court below.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that respondent no. 1/ plaintiff filed a suit for mandatory injunction seeking possession of the plot from the defendants, which he claimed to be in his ownership. According to him, the same was taken by the defendants from the plaintiff, who are his brothers and nephews, for tethering the cattles.

A perusal of the impugned order shows that after completion of the pleadings, the following issues were framed vide order dated 20.7.2009:-

- “1. Whether the plaintiff has become owner in possession of the plot no. 334 measuring 20 X 45 of 100 sq. yard situated at Feroze Gandhi Colony, Gurgaon, vide gift deed dt. 2.5.1984 detailed in para no. 1 of the plaint. OPP
2. Whether the plaintiff has raised boundary wall of 6 feet height and fixed a gate. OPP
3. Whether the plaintiff has given the said plot on licensee to defendants due to close relations without any rent or consideration in the month of Feb. 2007. OPP
4. Whether the plaintiff has no locus standi to file the present suit. OPD
5. Whether the plaintiff is estopped from filing the present suit by act and conduct. OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Whether the suit of the plaint is barred by limitation. OPD.
8. Whether the suit of the plaintiff is not maintainable. OPD
9. Whether the suit of the plaintiff has not been properly valued for the purpose of court fees. OPD
10. Relief.”

After conclusion of evidence by the parties, the case was adjourned on number of occasions and thereafter the application for framing of additional issues was filed by defendant nos. 2 and 4/ petitioners on 17.8.2011, seeking framing of the following issues:-

- “1. Whether the suit of the plaintiff is bade for misjoinder of parties? OPD
2. Whether the possession of the defendants Nos. 2 & 4

is adverse to the rights of the plaintiff and since more than 12 years? OPD

3. Whether the plaintiff sold the plot in question to the defendant No. 2 in the year 1995 and handed over the original allotment letter /sale deed to deft. No. 2? OPD.

The application was rejected by the learned Court below. A perusal of the written statement filed by defendant nos.2 and 4 shows that a stand was taken in para 6 of the written statement that defendant no. 2 purchased the plot in question from the plaintiff for a sum of ₹ 1 lac in November, 1995 and ever since then, he is in possession thereof as owner. It is not claimed in the written statement that any sale-deed was registered in favour of defendant no. 2.

A perusal of the written statement does not show that any plea regarding ownership on the basis of adverse possession has been taken. It was not pointed by learned counsel for the petitioners that in support of the plea taken in the written statement regarding purchase of the plot in question, any evidence was led by them or any document was produced. Learned counsel for the petitioners has not been able to explain how ownership of immovable property worth ₹ 1,00,000/- could be transferred merely by paying the amount and handing over document of title. No effort was made by defendant nos. 2 and 4 at any stage till the conclusion of the evidence of the parties to seek framing of additional issues. The stage at which the application was filed clearly shows that effort was merely to delay the proceedings.

No illegality has been committed by the learned Court below in declining the prayer. There is no merit in the present petition. The same is, accordingly, dismissed.

20.5.2015
vs

(Rajesh Bindal)
Judge