

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

CR No.6833 of 2014
Date of Decision:18.02.2015

Ram Sarup

. . . . Petitioner

Vs.

Sukhvinder Singh

. . . .Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vivek K. Thakur, Advocate,
for the petitioner.

None for the respondent.

RAKESH KUMAR JAIN, J.

The petitioner is aggrieved against the order dated 26.8.2014, dismissing his application for amendment of the plaint.

The plaintiff has initially filed a suit for permanent injunction restraining the defendant from interfering in his possession over the land measuring 12 marla, marked with letters 'ABCD', shown in Red colour in the site plan comprised in Khewat No.31/27/62, Khasra No.627/9-2, situated in Village Murar, Sub Tehsil Dhilwan, District Kapurthala.

It is averred in the plaint that the suit land was purchased by the plaintiff vide registered sale deed dated 28.8.1992 from the son of Mulkh Raj namely, Narender Kumar. The defendant allegedly tried to take forcible possession over the suit land and to amalgamate it in his own land, hence, the cause of action has arisen to the plaintiff to file the suit for permanent injunction.

During the pendency of the suit, he filed an application for amendment of the plaint to the effect that he is owner of the property in dispute described in the first para of the head note of the plaint and further a declaration that mutation of exchange No.1778 has no concern whatsoever with the suit property and the entries in the revenue record made in favour of Kewal Krishan, Ram Pal and in favour of Sukhwinder Singh (defendant) are illegal and has no affect on the rights of the plaintiff. The proposed amendment is as follows: -

“4. Following relief shall be added in the Head note of the plaint

“Suit for declaration to the effect that the plaintiff is owner in possession of the property detailed and described in the first part of the head note of the plaint above and for further declaration that the mutation of exchange No.1778 has no concern whatsoever with the suit property and the entries in the revenue record made in favour of Kewal Krishan and Ram Pal and in favour of Sukhwinder Singh defendant are wrong and illegal and have effect on the rights of the plaintiff”

4. Following para No.4-A shall be inserted in the body of the plaint.

That the plaintiff had purchased the suit property from Narinder Kumar son of Mulkh Raj son of Dhuma Mal r/o village Murar and said Narinder Kumar was owner in possession of the property and his name was duly reflecting in the revenue record. The

name of Kewar Krishan and Ram pal was no where in existing or reflecting any where in the revenue record against the suit property. The possession of the property was also with Narinder Kumar and hence there was no hindrance before the plaintiff to purchase the property in question. The alleged exchange allegedly with regard to suit property never took place between Narinder Kumar abovesaid and Kewar Krishan and Ram Pal sons of Mulkh Raj son of Dhuma Mal and hence the entries if any made on the basis of alleged exchange in favour of abovesaid Kewal Krishan and Ram Pal and after that in favour of defendant are wrong, baseless and illegal and has no effect on the rights of the plaintiff. The alleged mutation of exchange No.1778 has no concern whatsoever with the suit property. The entire allegations regarding the exchange of suit property is an afterthought and has been coined just to grab the property of the plaintiff.

4. *The proposed amended Para No.8 shall be read as under after amendment.*

That the value of the suit for the purpose of Court fee and jurisdiction for the relief of permanent injunction is fixed at ₹500/- upon which a Court fee of ₹50/- is payable, the value of the suit for the purpose of court fee and jurisdiction for the relief of declaration is fixed at ₹500/- upon which a Court fee

of ₹50/- is payable as such total Court fee of ₹100/- is payable which is affixed.

- iv) The following prayer will be added at the end of prayer clause.*

“It is further prayed that a decree of declaration to the effect that the plaintiff is owner in possession of the property detailed and described in the first part of the head note of the plaint above and for further declaration that the mutation of exchange No.1778 has no concern whatsoever with the suit property and the entries in the revenue record made in favour of Kewal Krishan and Ram Pal and in favour of Sukhwinder Singh defendant are wrong and illegal and have no effect on the rights of the plaintiff may please be passed in favour of the plaintiff and against the defendant with costs.”

The learned trial Court has dismissed the application on the ground that earlier the suit was filed for injunction which was related to the possession of the plaintiff and now he is seeking declaration which relates to his title, therefore, it would change the nature of suit in its entirety.

Learned counsel for the petitioner, however, submits that in the suit filed for injunction, the petitioner has alleged that he is owner of the property in dispute and has tried to protect his possession, therefore, he is not claiming the injunction over the property in dispute only on the basis of his possession but also on the basis of his title and by virtue of the amendment he is seeking

further declaration that the mutation of exchange No.1778 has no concern whatsoever with the suit property.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that the order of the learned trial Court, dismissing the application of the petitioner, is illegal, erroneous and deserves to be set aside.

No doubt that initially the petitioner had filed only a suit for permanent injunction but it was categorically urged that he is in possession, being the owner, on the basis of a sale deed in his favour, therefore, he is not trying to built up his case now on the basis of his title as earlier it was not simply based upon his possession only. All that has been asked for by the petitioner is also to make an averment that the mutation of exchange is not binding on the rights of the petitioner. Thus, the trial Court is not correct in holding that the amendment is drastically going to change the nature of the suit.

In view of the aforesaid discussion, the present revision petition is allowed and the impugned order is hereby set aside.

18.02.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**