

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No.8187 of 2014  
Date of decision: 25.08.2015

Mulakh Raj and others

... Petitioners

Versus

Roshan Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sarvesh Kumar Gupta, Advocate  
for the petitioners.  
Mr. IS Pabla, Advocate for the respondents.

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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?

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ARUN PALLI J. (Oral)

Vide order being assailed, dated 20.08.2014 (Annexure P5), the application moved by the petitioners-plaintiffs seeking amendment in the plaint has since been partially declined. As even a review application moved by the petitioners-plaintiffs of the said order was dismissed, vide order dated 30.09.2014 (Annexure P7), petitioners-plaintiffs are before this court.

In a suit filed by the petitioners-plaintiffs, they prayed for a decree for injunction, restraining the defendants from alienating and interfering in their possession over the suit property. They also claimed title on the basis of an affidavit given by Lal Chand pursuant to a family settlement.

Since during the pendency of the suit, defendants No.1 & 2 i.e. Roshan Lal and Satpal, despite status quo, executed a sale deed dated 08.01.2013, qua the suit property, petitioners-plaintiffs sought an amendment in the plaint to assail the sale deed dated 08.01.2013. Further, as they also came to know of a Dastbardarinama (relinquishment deed) dated 11.09.2000, purportedly executed by Lal Chand, plaint was sought to be amended to assail the said document as well. However, vide order dated 20.08.2014, the prayer was partially accepted. Amendment qua the sale deed dated 08.01.2013 was granted but the prayer to assail relinquishment deed dated 11.09.2000 was declined. The order passed by the trial court reads as thus:

- “6. As per the reply and arguments on part of the respondents, the plaintiffs very well knew about this relinquishment deed. By pointing out at the plaint, the counsel has argued that even the plaintiff has mentioned it in his plaint. I have perused the plaint and in para no.8 (b) of the plaint, the plaintiffs have mentioned about this Dastbardarinama alleged to be executed by Lal Chand. He has already challenged it claiming to be forged and fabricated. He has already pleaded about this Dastbardarinama in his relief para 1 (a). Therefore, relief qua this relinquishment deed incorporation by way of amendment is declined.**
- 7. No doubt, the court granted status quo at the spot till further orders vide order dated 19.12.2012. The sale deed is alleged to be executed on 8.1.2013**

**i.e. after this stay order and during the pendency of this suit. Therefore, the plaintiffs are entitled to amend their plaint qua this relief and incorporate this fact. Any subsequent event can be incorporated by way of amendment in the pleadings under order 6 rule 17 CPC. The court places reliance upon 2012 (2) CCC 300, 2004 (3) CCC 401 and 2012 (3) ACJ 125 (SC) in which the Hon'ble Supreme Court of India held that the power of amendment should be exercised in a judicious way in order to grant full and complete justice to the parties. In addition to this under order 6 rule 17 CPC court can allow amendment at any stage which is necessary for the purpose of determining the real controversy between the parties. When the suit property in part has been sold to a stranger, obviously, the vendor has lost his interest in the suit. Now the necessary party i.e. the vendee has to compete with the plaintiffs, therefore, this subsequent event of sale is covered under order 6 rule 17 CPC. The application under hand is hereby allowed qua sale of property only. The application qua incorporation of facts regarding relinquishment deed dated 11.9.2000 is hereby declined. Therefore, application under hand is partly allowed and partly declined. Amended plaint is already placed on record. Now to come upon 29.9.2014 for filing written statement to the amended plaint."**

Concededly, trial court while deciding the application observed that the plaintiffs had indeed referred to *Dastbardarinama* in para 8(b) of the plaint and the same was even alleged to be a forged and fabricated document.

Therefore, the amendment prayed for was misconceived. Whereas, in the original plaint, there was no reference to *Dastbardarinama* and the same was not even assailed by the plaintiffs. Concededly, learned trial court referred to the contents of para 8(b) of the amended plaint. In short, what was referred to by the trial court was indeed the proposed amendment. So much so, despite having noticed the error that was apparent on the face of the record, in a review application, trial court still declined the amendment prayed for, though this time for a different reason. In any case, the reason assigned by the trial court even to dismiss the review application cannot be sustained. Vide proposed amendment, petitioners-plaintiffs also intend to challenge the relinquishment deed i.e. *Dastbardarinama*, dated 11.09.2000, as defendants No.1 & 2 claim title on the basis of the said document and that is how, they executed a sale deed dated 08.01.2013. Once, the trial court had granted amendment qua sale deed, amendment qua relinquishment deed too ought to have been granted, as proposed amendment is apparently relevant and necessary to arrive at a fair decision in the matter as also to avert multiplicity of litigation.

Learned counsel for the respondents could not point out as to how the petitioners could be denied the proposed amendment in the wake of the facts and circumstances on record.

That being so, the revision petition is allowed. Consequently, the orders dated 20.08.2014 (Annexure P5) and dated 30.09.2014 (Annexure P7) are set aside. Prayer of the petitioners-plaintiffs for amendment in the plaint qua *Dastbardarinama* (relinquishment deed), dated 11.09.2000, is granted.

August 25, 2015  
Rajan

( Arun Palli )  
Judge