

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 8206 of 2014

Date of Decision : January 22nd, 2015

Sarvjit Singh Bedi through his L.R.
Gurpreet Singh Bedi

.... Petitioner

Versus

Romesh Kumar and others.

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Arun Luthra, Advocate,
for the petitioner.

Dr. BHARAT BHUSHAN PARSOON, J.

Order dated 14.11.2014, whereby application filed by the plaintiff-revisionist, [petitioner herein] has been dismissed by the lower Court is under challenge, in this revision petition.

2. A civil suit had been filed by the plaintiff, petitioner herein, for declaration, challenging judgment and decree dated 22.10.1992 based on agreement to sell dated 26.09.1988 in a suit titled **Romesh Kumar Vs. Smt. Lajwanti and Manjit Singh**. Ancillary relief of permanent injunction etc. had also been claimed. Basis of suit of the plaintiff is mortgage deeds dated 16.12.1974 and 16.4.1975. It is also claimed that vide rent deed dated 16.4.1975, owner Behara Singh had rented out the premises to Smt. Harjit Kaur, mother of the petitioner-plaintiff. It is claimed that the documents of the petitioner take precedence over all the documentary and oral evidence produced in the suit resulting in passing of the impugned decree of 22.10.1992 and thus, the decree should be set-aside.

3. By way of amendment of the plaint, completely a new case is sought to be set-up claiming that information received under the Right to

Information Act, 2005 has made the petitioner wise and making it necessary to these facts to be brought in the plaint requiring amendment. Para No. 11-A is sought to be added in the plaint, which for ready reference, is reproduced as below:-

"11-A. That the House No.3346, Sector 27D, Chandigarh (RP No.9551) was in the name of Behara Singh s/o Sh. Maghar Singh in the year 1972. The said house built upto 2-1/2 storyes was mortgaged with lease deed with Smt. Harjit Kaur, vide registered mortgage deed and registered lease deed dated 16.04.1975. The occupants of the said house including Behara Singh his wife Lajwanti, his son Manjit Singh became the tenants in the said house on the monthly rental of Rs. 340/- envied [sic] in aforesaid lease deed. These documents were registered in the office of Sub Registrar, UT Chandigarh and were part and parcel of the ownership of the above said house. Since the said house was mortgaged so no WILL was maintainable against the said house to be executed by late Sh. Behara Singh in favour of his wife Lajwanti and his son Manjit Singh. Late Sh. Behara Singh died on 03.09.1984. A document in the shape of affidavit is there in the Estate Office file which is undated and not been signed by Lajwanti or Manjit Singh. So much so Lajwanti has not affixed her thumb mark on it. This affidavit has been shown to be attested on 21.11.1984. An application dated 21.11.1984 at page No.89 of the Estate Office file shows that request for transfer was made but again this document has not been either thumb marked by Lajwanti or signed by Manjit Singh (as fictitious and forged RTI and signatures) are there. It is pertinent to mention here that on record no original Will has been placed till date. As per page No.91 vide memo No.18921/RP-8551/G-I & 11 dated 28.08.1985 objection was raised to disclose the name of all legal heirs. This objection was never removed and an application dated 05.06.1985 (page No.92) was moved by one Mahesh Gupta in his hand writing who signed in English signatures of Lajwanti and signatures of Manjit Singh. Then an affidavit was also filed on stamp of Rs.5/- therein address of 3246, 27-D, has been mentioned on the stamp paper purchased in the name of Manjit Singh and forgery was committed regarding the signatures of Lajwanti and Manjit Singh and this document was signed by Mahesh Kumar Gupta who did so. Then on 14.11.1985 page No.96 of ownership file of Estate Office again Mahesh Gupta given address 3356, Sector 27-D, Chandigarh did the signatures of Manjit Singh and document at page No. 97 was procured by Mahesh Kumar Gupta at his address. Then again application dated 27.09.1988 at page No.98 of the Estate Office file was moved by committing forgery and transfer letter was got issued at the address of 3356, Sector 27-D, Chandigarh, vide letter No.16895/RP No.9551/G-16,11 dated 11.10.1988. No original Will was taken on record. Affidavit of legal heirs were not taken on record and straitaway the property was transferred from the name of Behara Singh to the name of Lajwanti and Manjit Singh. The said Romesh Kumar in connivance with Estate Officer

de-tagged the aforesaid mortgage deed and lease deed dated 16.04.1975 from the ownership file of the Estate Office. He in connivance with Mahesh Kumar created forged agreement to sell dated 26.09.1988 and on the basis of it, he filed civil suit titled Romesh Kumar v/s Lajwanti and thereupon with manipulation and connivance with Estate Office employees got de-tagged mortgage deed and lease deed mentioned above and on the basis of it and without producing it in the court got the decree of performance, whereas these documents if would not have been de-tagged from the ownership file then neither property could be transferred from the name of Behara Singh to the name of Lajwanti and Manjit and further no agreement to sell could have been executed against the mortgage property and further it was with lease also. Hence by misleading and misrepresenting the facts before the civil court decree was obtained. The glaring facts on the record of the Estate Office in the file at page No.187 depicts the facts that letter of **NOC** No. 32900/Loan/HBL-031441 dated 02.09.2002 was issued by the Estate Office to Behara Singh at the address 3346, Sector 27-D, Chandigarh, without any reference of any letter, whereas Behara has already died on 03.09.1984. So it shows how the Estate Office was acting. So much so at page No.225 forgery of the signatures of Sarvjit Singh Bedi has been done in letter dated 31.03.2008. So it all shows that there was nexus between Mahesh Kumar, Romesh Kumar and other Estate Office employees to grab the property, which was under mortgage with Smt. Harjit Kaur mother of Sh. Sarvjit Singh Bedi. So much so, a totally false, fraudulent document has taken at page No. 26 of the Estate office file, vide memo No. 809051 dated 01.04.2008, which is totally sham document, which is totally *farzi*, and further actual document is mortgage deed dated 16.04.1975 with lease deed dated 16.04.1975 both documents are registered with the office of Sub Registrar, Chandigarh at Serial No. 64, Book No.1, Vol. 40, Page No. 17 day Wednesday dated 16.04.1975. Therefore, removing of this document from the ownership file of House No. 3346, Sector 27-D, Chandigarh is not only misleading and representing on civil side but also criminal act. It is pertinent to mention here that Will could not be executed in view of mortgaged deed and lease deed (both registered documents). So it is very apparent that violation of rules have been committed by Ramesh Kumar in connivance with Estate Officer and other persons mentioned above. So much so criminal complaint and its enquiry is pending with the office of Deputy Commissioner, Chandigarh in this regard, in view of the aforementioned facts. So much so the Asstt. Estate Officer has also called for the comments for above mentioned matter. Thereupon at page No.590, the Asstt. Estate Officer made the queries as under:-

1. How come the fact that the property in question was mortgaged, was not produced in the court?
2. How was the Will executed when the mortgage deed was already on file?
3. What about the civil rights of the sister of Manjit Singh which are also on record?

4. Why no effort was made to check the veracity of affidavits which the sister claimed she never submitted (NP-12).
5. Where is the noting prior to 1984.
6. Pl. flag the mortgage deed on file.
7. I want to know the names of all officials who dealt with this file when the transfer was done in favour of Ms Lajwanti and Mr. Manjit Singh.

The aforementioned facts depict the fact that Estate Office employees in connivance with Romesh Kumar, Mahesh Kumar and others have committed the illegal act of transferring of property and thereupon obtaining decree from the court in illegal, unlawful, fraudulent manner and by forging the documents and further by withholding the documents. Hence judgment and decree dated 22.10.1992 passed by Ms. Meena Chaudhary, Sub Judge 1st Class, Chandigarh is inoperative, null and void and is liable to be set-aside in view of the facts and circumstances of the case.”

4. This application was strongly contested by the defendants-respondents herein. It was brought to the notice of this Court that cross-examination of one of the witnesses of the respondents is pending for the last so many years, but the petitioner herein, by making one application or the other, is delaying and dilating the proceedings and is prolonging the litigation whereas the impugned judgment has already been upheld even upto the Hon`ble Supreme Court of India and has achieved finality. It is claimed that the admissions made by the applicant-petitioner, in fact, are sought to be withdrawn to put the entire litigational course travelled till date, in the reverse order. Dismissal of the application was sought.

5. While dismissing the application, the civil Court has come to the conclusion that neither the amendment sought is bona fide nor is required for proper and competent adjudication of the matter. It was rather observed by the lower Court that if this application is allowed, it would amount to reopening of the case and of litigation which has achieved finality upto the Hon`ble Apex Court, which is not permissible.

6. Some of the factors going against the amendment sought for by the applicant-petitioner herein are given on the next page:-

- 1]. The decree dated 22.10.1992 concededly has achieved finality even upto the level of Hon`ble Apex Court;
- 2] This case pertains to the year 2004 and is lingering on for cross-examination of the witnesses of the respondents, but the applicant-petitioner on one score or the other, is delaying and dilating the proceedings;
- 3] Even for addressing arguments on this application, the petitioner took one year clearly in a bid to delay the proceedings;
- 4]. The documents as also amendment sought by the applicant-petitioner are of yester years and were very much in his knowledge. The litigation is not new one, but is continuing since 1988;
- 5]. Similar application moved by the applicant-petitioner has already been dismissed by the Court below; and,
- 6]. When factual position is examined to see merits of the application, the contesting respondent and not the petitioner-applicant is in possession of the property. Had the petitioner being mortgagee in terms of mortgage deed dated 16.12.1974 and tenant in terms of rent deed dated 16.4.1975 possession was to be with the petitioner. This aspect has not been explained by learned counsel for the petitioner even during the course of arguments before this Court.

7. At this stage, legal position may also be adverted to. Proviso has been added to Rule 17 of Order VI CPC which, for ready reference, is appended as below:-

“ Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. Since the trial has already started and is rather at the final stage, when the evidence of the respondent is being recorded, the amendment is highly belated and delayed. When it is based on documents of the year 1974-75 and the litigation is continuing for the last 18 years, it cannot be said that the documents were not in the knowledge of the petitioner-plaintiff, particularly when a similar application moved earlier had already been dismissed.

9. Counsel for the respondents defending the impugned order, has placed reliance on **Jagdish Chander Chatterjee Versus Shri Sri**

Kishan 1972 AIR (SC) 2526. Observations made by Hon'ble Supreme Court of India in para 10 of this authority are reproduced as below:-

“10. Under sub-clause (ii) of Rule 4 of Order 22 Civil Procedure Code any person so made a party as a legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title.”

10. In yet another authority **Joginder Kaur and others Versus Narinder Kaur and others 2006(2) PLR 414** of this Court wherein amendment sought in the pleadings by the legal representatives of the deceased-defendant was declined by the lower court such order was reversed by this Court by making the following observations in para Nos.4 and 5 of the judgment:

“4. After hearing learned Counsel for the parties, I am of the opinion that the order passed by the learned trial Court declining the amendment is not sustainable in law. The reasoning given by the learned trial Court that the defendants cannot be permitted to challenge the stand taken by their predecessor Baljit Singh, is not sustainable as the legal representatives of the deceased-defendant have same right as were possessed by the deceased-defendant. Had the defendant been alive, he would have the same right to seek the amendment in the written statement. Therefore, the said right cannot be declined to the legal representatives.

5. The challenge in the suit is to the mutation on the basis of Will and the consent decree suffered by Balwant Singh in favour of his son Baljit Singh. Therefore, it is open to the defendants to seek amendment alleging that Baljit Singh has got the estate from Balwant Singh on the basis of Will dated 21.11.1980, therefore, I am of the opinion that the order passed by the learned trial Court, declining the amendment, is not sustainable in law.”

11. Dealing with the matter of amendment of the pleadings, the Hon'ble Supreme Court in **Revajeetu Builders & Developers v.**

Narayanaswamy & Sons, 2010(1) RCR (Civil) 27 (SC), discussing the entire English as well as Indian law with respect to factors to be taken into consideration while dealing with applications for amendment, in para 66 to 70 of this judgment, held as under:-

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

12. Even when viewed from the angle of this authority, all the points work against the petitioner-plaintiff. The impugned order is not only

well written, but also takes care of each and every aspect having concern with the matter in dispute.

13. No merit. Dismissed *in limine*.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

January 22nd, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes