IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Regular Second Appeal No.4483 of 2015 (O&M)
Date of Decision: November 26, 2015

Manphool Singh and others

...Appellants

Versus

Collector, Jhajjar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.R. Yadav, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.10768-C of 2015

This application is under Order I Rule 10 CPC read with Section 151 CPC for deleting the names of respondents 3 to 5 in their personal capacity and impleading them in official capacity only.

It has been stated that the suit has been filed impleading respondents 3 to 5 in their personal capacity along with their official capacity. The said respondents-defendants are no more holding the post. The relief which has been claimed is only for a direction to them in their official capacity and impleading them in their personal capacity would not serve any purpose. Prayer has, thus, been made for impleading respondents 3 to 5 in their official capacity instead of their personal capacity by deleting their names in their personal capacity. The application is supported by the affidavit of appellant No.6.

In view of the above, the present application is allowed for the reasons mentioned therein.

Respondents No.3 to 5 are impleaded in their official capacity as defendants 3 to 5 in the suit.

CM No.10769-C of 2015

This application has been filed under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the plaint for adding the relief of declaration. The amendment which is being sought in the plaint is detailed in para 7 of the application, wherein substitution is sought in the heading of the plaint in place of "suit for mandatory injunction" to "suit for declaration and mandatory injunction". The amendment is also sought by inserting the following clause in the prayer clause:-

> *"i) Decree for declaration to the effect that the plaintiffs are entitled to 1/8th share in the suit land as per sale deed No.1822 dated 19.09.1957 and mutation No.92 sanctioned on 25.08.1961 and that Jamabandi entries from 1960-61 to till date showing father of the plaintiffs namely Sadhu son of Deepu as "Gair Kabij" contrary to mutation No.992 sanctioned on 25.08.1961 are illegal and not binding on the rights of the plaintiffs and same are liable to be declared null and void and the plaintiffs are entitled to get the same corrected in the revenue record".*

The reason assigned for seeking this amendment is that the appellants-plaintiffs being simpleton villagers were not aware about the intricacies of law and, therefore, the proposed amendment could not be brought about earlier despite due diligence as observations regarding maintainability of the suit were not given by the learned trial Court and it is only at the stage of appeal that it has been held that the suit is not maintainable. It has been pleaded that all the correct facts were brought to the notice of the counsel and have been duly incorporated in the plaint. Rather the plaintiffs have also led their entire evidence showing that the revenue entries starting from the year 1960-61 onwards were illegal and not binding upon the rights of the plaintiffs. Assertion has been made that the amendment is necessary for proper decision of the matter in controversy and no further evidence is required to be led by either of the parties and, therefore, the present application be allowed and the amendment as proposed by the applicants-appellants may be permitted to be added in the plaint in the interest of justice.

Counsel for the applicants-appellants has asserted that the amendment to the plaint can be permitted by the Court at any stage including appeal. He contends that the primary purpose for amendment would be to do justice between the parties and for determining the real question of controversy between them. Merely that there is a delay on the part of a party should not be a ground for denying the said amendment. The Court should not take a hypertechnical approach but a liberal approach should be adopted as a general rule particularly in cases where technicalities of law would hamper the Courts in administration of justice between the parties. He contends that the explanation, as has been given by the applicants-appellants in the application, clearly shows that the amendment could not have been brought about earlier despite due diligence. He has further asserted that in a suit for declaration based on a title, the limitation is three years as per Article 58 of Limitation Act, 1963, and the time will begin to run when the right to suit accrues and, therefore, the present application deserves to be allowed. In support of these contentions, he has placed reliance upon the judgment of the Supreme Court passed in case titled as ***State of Maharashtra Versus M/s. Hindustan Construction Co Ltd. 2010(4) SCC 518*** and the judgment of this Court passed in ***Manti and others Versus Sarwati Devi and others 2003(4) R.C.R. (Civil) 677***.

I have considered the submissions made by learned counsel for the applicants-appellants and on going through the application and the reasons assigned for filing the application at this stage in the appeal praying for permission for the amendment in the plaint, cannot be accepted.

Firstly as per Order VI Rule 17, the application for amendment in the suit, cannot be claimed as a matter of right and it is only where the amendment shall be necessary for the purpose of determining the real question in controversy between the parties. Proviso thereto puts a rider which is a duty cast upon the Court to consider and come to a conclusion that the proposed amendment could not have been taken and point in matter raised before the commencement of the trial in spite of due diligence. Although there can be no dispute on the principle that a liberal approach has to be adopted by the Court and the technicalities of law should not be permitted to hamper the Court in the administration of justice between the parties but the Court has also got to balance the equities between the parties so that injustice is not caused to the other party. However, the primary requirement is the satisfaction and conclusion of the Court that in spite of due diligence, the party could not raise the matter or could not make a prayer before the commencement of the trial.

In the present case, it is apparent that the basic tenor of the pleadings in the plaint is for seeking a mandatory injunction directing respondents 1 to 5 to make necessary correction in the revenue records concerned as per the order dated 25.08.1961 passed by the Collector, Rohtak. The thrust of the pleadings being so, the relief as claimed in the said suit as per the plaint was the same. The issues which have been framed by the trial Court are with regard to making necessary correction in the revenue record as per the order dated 25.08.1961 of the Collector, Rohtak and with regard to the father of the plaintiffs having purchased 1/4th share in equal share of the agricultural land with Kamla, the predecessor-in-interest of respondents 6 to 8 through registered sale deed No.1822 dated 19.09.1957. The parties have led their evidence also on that basis. The applicants-appellants have not been vigilant enough and diligent in pursuing the suit. The amendment which is being sought to be now incorporated in the plaint, in the considered view of this Court, cannot be permitted as the applicants-appellants have not show due diligence that the amendment could not have been brought earlier. Further, this cannot be permitted at this stage so as to fill up the lacuna in the pleadings.

In view of the above, finding no merit in the present application, the same stands dismissed.

RSA No.4483 of 2015

Challenge in this appeal is to the judgment and decree dated 30.07.2013 passed by the Additional Civil Judge (Senior Division), Jhajjar, whereby the suit for mandatory injunction directing the respondents-defendants 1 to 5 to make necessary correction in the revenue records concerned as per the order dated 25.08.1961 of the Collector, Rohtak, regarding mutation No.992 by entering the name of plaintiffs as owner in possession of 1/8th share in the suit land mentioned in para 1 of the plaint, stands dismissed on the ground that the appellants-plaintiffs by way of the suit are seeking execution of the order of the Collector for which it would not be maintainable and it was for the plaintiffs to have approached the appropriate authorities through an appropriate representation and that the civil suit has been filed to cover up the limitation. The Court had further gone to the extent of holding that the order of Collector pertains to the year

1961 which was to their knowledge since the day it was passed and they had been sleeping over their rights for more than five decades and, therefore, the suit of the plaintiffs is hopelessly time barred in the given facts and also bad for ground of delay and latches and that there is no evidence to prove that the correction has actually not been carried out at the spot. Appeal against which preferred by the appellants-plaintiffs has been dismissed by the District Judge, Jhajjar, on 30.05.2015 holding therein that the suit is not maintainable under Section 158 of the Punjab Land Revenue Act, 1887 as it is the duty of the revenue officer to make the entries in the revenue record and the Civil Court can grant declaration as to the rights of the parties and return the finding that the entries are wrong. The Civil Court has no power to direct the revenue officer to make a particular entry in the revenue records. The findings returned by the trial Court on all the issues have been affirmed by the Appellate Court.

Learned counsel for the appellants has asserted that the findings recorded by the Courts below are not sustainable on the ground that the suit has been dismissed on hypertechnical grounds. He contends that it is an admitted position that the parties to the dispute namely the appellants-plaintiffs and respondents-defendants 6 to 8 are in possession of the respective shares in pursuance to the sale deed No.1822 dated 19.09.1957. There is no dispute with regard to the plaintiffs being owners to the extent of $1/8^{th}$ share as per the registered sale deed and the correction of the revenue records was ordered by the Collector on 25.08.1961 but the same has not been incorporated in the revenue record. He contends that when it is an admitted case that the respective parties are in possession of their respective shares, the revenue record depicting Kamla and respondents

6 to 8, who are her successors, as exclusive owners instead of joint owners of the property cannot sustain. Admittedly, there has not been any partition between the parties and as per the order of the Collector of the year 1961, they are in joint possession. That being the factual position, the conclusion drawn by the Courts below that the Civil Court has no jurisdiction under Section 158 of the Punjab Land Revenue Act, 1887, is unsustainable.

To appreciate the argument of the counsel, the scope of Section 158 of the Punjab Land Revenue Act, 1887, is to be seen, which reads as follows:-

> ***"158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers.--*** *Except as otherwise provided by this Act-*
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> *(1) a Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue-officer is empowered by this Act to dispose of or take cognizance of the manner in which the State Government or any Revenue-Officer exercises any powers vested in it or him by or under this Act:*
>
> *(2) a Civil court shall not exercise jurisdiction over any of the following matters, namely:-*
>
> *(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;*
>
> *(vi) the correction of any entry in a record-of-rights, annual record or register of mutations;".*

The above provision which governs the extent of the Civil Courts jurisdiction is clear and specific.

The decree sought by the appellants-plaintiffs, thus, has rightly been declined by the Courts below by holding that the Civil Court has no jurisdiction in the matter. In the evidence which has been led by the appellants-plaintiffs it has been admitted that they have never approached the appropriate authorities for getting the correction in the revenue record. Plaintiff Ved Parkash PW-1 has admitted during cross-examination that they have never appeared before the Tehsildar personally for correction of the records. He has even gone to the extent of admitting that the Khewat between his ancestor Sadhu Ram and defendant Nos.6 to 8, who are successors of Kamla son of Shri Bhagwana is still joint. He has stated that he has not even seen fard badar No.10 and does not know whether their father Sadhu Ram was in possession over the property actually purchased by him. Even Randhir Singh DW-2 respondent No.7 has admitted that Khewat is still joint. All this evidence leads to the conclusion that the findings recorded by the Courts below that it does not have jurisdiction and the suit is not maintainable are correct which do not call for any interference by this Court.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.10770-C of 2015, stands disposed of as infructuous.

November 26, 2015 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**