

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

**CR No.4572 of 2016 (O&M)
Decided on: 23.07.2016**

Chamkaur Singh and another

....Petitioners

Versus

Jatinder Dass and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Saravpreet Gurna, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against the order dated 27.05.2016 passed by the Civil Judge (Sr. Division), Patiala whereby application filed by respondent No.1 (plaintiff) for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') has been allowed.

The respondent/plaintiff (Jatinder Dass) has filed a suit for declaration that he is owner in exclusive possession of agricultural land measuring 04 kanals 02 marlas detailed in headnote of the plaint. It is averred that sale deed dated 24.04.2001 was executed by defendant No.1 for agricultural land measuring 01 kanal ½ marla out of total share measuring 15 kanals 15 marlas. The entry in *Jamabandi* for the year 2007-08 whereby share of the plaintiff has been shown to be reduced to the extent of 1/6th share i.e. 13½ marlas is illegal, null and void and not binding on rights of the plaintiff and liable to be corrected. Further prayer has been made for grant of permanent injunction restraining defendant No.1 from alienating land to the extent of 13½ marlas and

interfering in peaceful possession of the plaintiff over the suit land.

The respondent/plaintiff filed the instant application for amendment of the plaint on the plea that while challenging the revenue entries, the applicant omitted to mention sale deed dated 05.02.2004 executed by defendant No.1 in favour of defendant No.4 and sale deed dated 22.04.2005 executed by defendant No.4 in favour of defendants No.5 and 6 and the sale deeds are not valid and binding on rights of the plaintiff and in view thereof, he sought to make amendment in the headnote and in certain paras of the plaint, detailed in paras 4 to 6 of the application (Annexure P-2).

After having heard counsel for the parties and on consideration of the materials on record, the learned trial Court granted plea of the respondent/plaintiff with the observations that while filing the suit, averments were made with regard to execution of sale deeds but detail of the same was not given. The proposed amendment will not change nature of the case and is necessary for adjudicating the controversy involved in the suit.

The sole submission made by counsel for the petitioners is that in case the impugned order is allowed to sustain and the petitioner is permitted to challenge the sale deeds executed in the year 2004/05, it would cause a serious prejudice to the petitioners as claim of the respondent/plaintiff to challenge the aforesaid sale deeds in the year 2016 is clearly barred by limitation. It is further submitted that the learned trial Court failed to examine this important aspect of the matter and thus committed a serious error by allowing the application.

I have heard counsel for the petitioners, perused the paperbook particularly the various annexures appended with the petition.

A plain reading of the reply to the application (Annexure P-3) submitted by Chamkaur Singh and Kulwinder Singh (petitioners herein) would make it manifest that no such plea in regard to limitation was raised before the trial Court. On the other hand, the petitioners raised preliminary objections *inter alia* on the ground of delay the amendment is being made to fill up the lacuna; the same will change nature and character of the suit and it amount to reopening of the matter from the initial stage as the suit is pending for the last more than 04 years and is at the fag end. As the petitioners did not raise the question of limitation before the trial Court, there was no occasion for the trial Court to examine that issue, now raised.

The respondent/plaintiff in para 6 has averred that defendant No.1 after sale of total share has again re-sold share of the plaintiff on specific/special number to defendant No.4 on behalf of defendants No.2 and 3 and defendant No.4 has further sold to defendants No.5 and 6. The share of the plaintiff and entries in the revenue record are not binding on the plaintiff affecting his share to the extent of 13½ marlas. In the suit, there is reference to the sale of share of the plaintiff by the defendants, though, there is no specific reference to the sale deeds vide which the sale was effected. The suit was instituted by the respondent/plaintiff in the year 2011. Even if the proposed amendment to challenge the sale deeds of 2004-05 relates

back to the date of institution of the suit, the plea of limitation to challenge these sale deeds in the year 2011 would still be available to the petitioners/defendants, therefore, there is no question of any prejudice being caused to the petitioners for which they cannot be compensated adequately in terms of money. In this view of the matter, I find myself unable to accept the submissions made by counsel for the petitioners that the proposed amendment should not be allowed as it would amount to taking away right of the petitioners *qua* limitation.

No other point has been raised.

In view of what has been discussed hereinabove, the petition fails and is accordingly dismissed *in limine*. Nothing stated hereinbefore would be construed as an expression of opinion on merits of the case.

23.07.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No