IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4592 of 2015 (O&M)
Date of decision: 01.06.2016

Balbir Singh and another

... Petitioners

versus

Amolak Ram

.... Respondent

2. ESA No. 9 of 2014

Balbir Singh and another

... Appellants

versus

Amolak Ram

.... Respondent

3. CR no. 5942 of 2013 (O&M)

Balbir Singh and another

... Petitioners

versus

Amolak Ram

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pritam Saini, Advocate for the petitioners.

Mr. V B Aggarwal, Advocate for the respondent.

K.Kannan, J. (ORAL)

CR No. 5942 of 2013

The revision is at the instance of the respondent-defendant contesting an appeal filed by the plaintiff at the appellate stage. The plaintiff has brought an application for amendment of the plaint with reference to the shares claimed in the plaint as having omitted to describe the correct extent. This was permitted by the Appellate Court. The Court had not allowed for the additional issue to be framed with reference to the entitlement and based on additional pleadings permitted to the defendant on the basis of the amendment. The revision is against the order declining to frame an additional issue. It is represented that the appeal itself has been withdrawn by the plaintiff. The revision has become infructuous and disposed of as such.

ESA No. 9 of 2014 and CR No. 4592 of 2015

Both the matters are connected as in relation to the same property and between the same parties.

In a suit for specific performance filed by the plaintiff for enforcement of an agreement dated 0901.2016, he had claimed for execution of the sale deed for 38 kanals being 760/7634 out of the land purporting to measure 281 canals 14 marlas. The suit had been decreed on 26.02.2011 but the plaintiff himself had preferred the appeal, since according to him, the extent was wrongly mentioned in the suit and he therefore filed an application for amendment of the plaint at the Appellate Court. The amendment was allowed but since the defendant had not been granted the benefit of additional written statement, the defendant had brought a revision to this Court which was allowed and the defendant was permitted to file an additional written statement. On the basis of the additional written statement, the defendant wanted an additional issue to be framed which the Appellate Court declined to make, this was brought in revision in CR No. 5942 of 2013. In the meanwhile, the appeal filed by the plaintiff itself was sought to be withdrawn. Since the appeal was withdrawn, nothing survived in CR No. 5942 of 2013 for consideration.

The plaintiff who withdrew the appeal sought for execution of the sale deed and gave the description of property as 38 kanals, i.e. 760/7634 shares out of total land measuring 381 kanals 14 marlas, thereby making a correction of what was stated as a mistake in the plaint as it was originally framed and which he wanted to correct in the Appellate Court. The plaintiff's justification was that the decree had only provided for enforcement of the agreement dated 09.01.2006 in the following words " It is ordered that the suit of the plaintiff succeeds and is hereby decreed with costs to the effect that the plaintiff is entitled to a decree for specific performance of the agreement dated 09.01.2006 in respect of the suit land". Although the same decree made reference of detail of plaint as 281 kanals, the plaintiff's justification was that the operative portion of the decree made reference only to the property as mentioned in the agreement dated 09.01.206 and since the agreement actually contained reference only to the total extent, i.e. 381 kanals 14 marlas, there was no requirement for even a modification of the decree and sale deed was bound to be executed in the manner in which the property was described in the agreement. An objection was taken by the defendant under Order 21 Rule 34 CPC that the draft sale deed prepared made reference to 381 kanals 14 marlas as total extent which was at variance with the averment in the plaint described as 281 kanals 14 marlas. This objection was rejected and the sale deed was directed to be executed. It is stated that the sale deed was also executed on 08.01.2014 and the judgment debtor preferred an appeal to the Appellate Court which has confirmed the said judgment. The ESA No. 9 of 2014 is against the said judgment.

The counsel argues that there is even an application for amendment of the decree, before the trial Court. I will not make much of it, for, it is unnecessary and superfluous. The decree makes reference to the execution of sale deed in relation to the property contained in the agreement. The total extent of property that was required to be sold as 38 kanals is not in dispute. The share in relation to the property that would secure the 38 kanals namely, 760/7634 share is not in dispute. If there was a reference in the original plaint of the total extent as 281 kanals 14 marlas, it was an obvious mistake which can in the interest of justice be ignored as immaterial, for, after all the parties knew what they were bargaining for, namely of 38 kanals in respect of 760/7634 shares. If the plaintiff had originally preferred an appeal, and had advisedly withdrawn the same, he did what was competent and so long as the decree contained no ambiguity it was bound to be put in execution the way the agreement provided. The Court has therefore correctly discarded the objection, that the draft sale deed did not conform to the decree. It conformed to the agreement which was referred to in the decree. The sale deed which was executed therefore, in my view, is with reference to the correct extent and the Executing Court was perfectly justified in rejecting the objection and allowing for the execution of the sale deed to take place. I will find no error in the order passed by the Executing Court and the Appellate Court and dismiss ESA No. 9 of 2014 as without merits.

The plaintiff has resorted to proceedings before the revenue authority for working out the share of 760/7634 shares and has filed an suit for main profits for damages for income from the date when the sale was executed namely on 08.01.2014. Pending the suit, the plaintiff has filed an application for appointment of the receiver and this was dismissed. Against the order of dismissal, he preferred an appeal and the Court has directed certain mesne profits to be determined and as such the process in motion through the impugned order which is brought in challenge in CR No. 4592 of 2015. The counsel appearing on behalf of the petitioner would argue that, therefore, the suit itself is not competent, for, if there was a right to demand damages, that right ought to have been exercised in the suit for specific performance and it cannot be brought by means of separate suit. The contention is that the said suit will be barred by provisions of Order 2 Rule 2 CPC. The counsel for the respondent would join issue on the objection and state that his right to demand damages arose only on obtaining the decree and securing the sale deed, and it could not have been pressed in the civil suit itself. Even a right to demand partition cannot be pressed before the civil Court and it could be worked out only before the revenue authority.

The situation is not open and shut for either of the parties. It is perfectly competent for the defendant to contend that even the prayer for partition and separate possession along with the civil revision ought to have been pressedforth under Section 22 of the Specific Relief Act and it cannot be brought by means of separate suit. The issue of whether the partition could have been brought as a prayer permissible under Section 22 or the suit could have been filed only for enforcement of the agreement and that the relief of partition should be placed only before the revenue Court, could be a matter for consideration, at the time of trial in the manner pleaded by the plaintiff. I will not close the option of such consideration, by pronouncing my own mind of what the plaintiff could have done and whether Section 22 of the Specific Relief Act could have been invoked by him even at the time of 1st suit. If the Court was directed mesne profits to be determined without allowing for the Receiver, it was at least trying to put the scales even and allow for the party in possession of the property to be accountable for income. Afterall the amount was not directed to be paid to the plaintiff immediately. The Court has only allowed for its determination. The issue of whether the plaintiff would have the benefit of such determination, will abide by the final adjudication at the time when the suit is disposed of. The Lower Appellate Court order will stand clarified only to the extent that the Commissioner who is appointed to determine mesne profits will make its report and the court will be at liberty to invite the parties to state their objections on the report. The Court will consider the objections and the report and pass a comprehensive judgment at the time of disposal of the suit.

The civil revision petition is disposed as requiring no modification of the order already passed, but, giving the clarification to the extent indicated above.

(K.KANNAN)
JUDGE

01.06.2016
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