

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

CR No.4692 of 2016

Decided on: 05.08.2016

Chand Singh through LRs Maghar Singh and others

....Petitioners

Versus

Balbir Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Prateek Mahajan, Advocate for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against order dated 15.07.2016 (Annexure P-1) passed by the Additional Civil Judge (Sr. Division), Guhla whereby application for amendment of the written statement filed by the petitioner was dismissed.

Counsel for the petitioner has submitted that on 29.01.2003, Balbir Singh – respondent No.1 filed a suit for possession by way of specific performance of agreement to sell. The defendants including petitioner never received any notice of the suit. Written statement on behalf of the petitioner and other defendants was filed on 05.02.2003 by misusing the blank papers got thumb-marked by Sh. Gurdev Singh, Advocate. The statement of petitioner/defendant was recorded by way of affidavit and stereotyped cross-examination has been made to get the decree for specific performance passed. The petitioner did not appear as a witness in the case but his statement on the file is the result of fraud and misrepresentation as he was under an impression that proceedings of partition were going on being an illiterate, old aged and simpleton villager.

On 08.05.2004, the defendants agreed to sell their land to

one Mewa Singh son of Kala Singh for a sale consideration of Rs.2,00,000/- per acre and received Rs.10,00,000/- as earnest money and sale deed was agreed to be executed on or before 15.11.2004. In August, 2004 defendant came to Cheeka and informed Sh. Gurdev Singh, Advocate about the said transaction and requested him not to cultivate the land and sow any crop.

It is further argued that on 23.07.2004, plaintiff filed an application for amendment of the plaint to substitute the suit land claiming decree in regard to specific portion of the land pleading that land has been partitioned between the co-sharers. The application was allowed vide order dated 10.08.2004 (Annexure P-2). The respondent/plaintiff filed amended memo (Annexure P-3) and defendants filed written statement dated 22.09.2004 (Annexure P-4). Replication dated 04.05.2005 to the written statement to amended plaint was filed by the plaintiff. In the replication, the respondent/plaintiff raised objection that in the written statement to the amended plaint, a new plea as preliminary objection No.5 has been added and the same is not permissible as the written statement to the amended plaint was required to be confined to the plea introduced by way of amendment. Though, the defendants were entitled to file written statement raising all the pleas open to them but the trial Court passed order dated 31.10.2007 (Annexure P-6) accepting objection of the plaintiff/respondent and directed that additional plea taken by the defendants in their amended written statement (Annexure P-4) is liable to be ignored. Later, the defendants filed an application under Order 6 Rule 17 CPC for amendment of the written statement to incorporate the additional plea

of fraud committed by Gurdev Singh, Advocate in connivance with the plaintiff and other persons in preparing agreement to sell and proceedings in the suit. The application was dismissed by the Additional Civil Judge (Sr. Division) Guhla vide order dated 03.11.2009 (Annexure P-9). The order dated 03.11.2009 was assailed in Civil Revision No.7472 of 2009 before the High Court. The High Court vide order dated 30.09.2010 allowed the revision petition and the matter was remitted to the trial Court with a direction to decide application for amendment on merits without being influenced by the order dated 03.11.2009. It is argued that during pendency of application for amendment, defendants No.3 and 4 entered into a compromise with the plaintiff and after receipt of money got registered a sale deed in favour of Rajesh Singh son of Gurdev Singh (Annexure P-13).

Counsel for the petitioner has vehemently argued that as the agreement to sell propounded by the respondent/plaintiff and the entire proceedings conducted before the Court on behalf of the defendants from inception i.e. filing of written statement till the alleged statement of the petitioner was recorded as a witness are the result of fraud committed by Sh. Gurdev Singh, Advocate who had obtained the thumb-impressions/signatures of the defendants on blank documents on the pretext of filing a case for partition of the joint land, in case, the petitioner is not allowed to amend the written statement in pursuance of application (Annexure P-7), justice would be a casualty and an undue advantage would be allowed in favour of the respondent/plaintiff. It is further argued that plea sought to be raised by way of amendment that Gurdev Singh is a king-pin for committing fraud is borne out from the

fact that the defendants never received any summons from the Court but the written statement on their behalf was filed on 05.02.2003 in a suit instituted on 29.01.2003. In addition, it is submitted that even on the basis of compromise effected with defendants No.3 and 4 – Mato and Mamo during pendency of the suit, sale deed (Annexure P-13) dated 18.01.2011 has been executed in favour of Rajesh Singh son of Gurdev Singh.

I have heard counsel for the petitioner and perused the paperbook particularly the various annexures appended with the petition.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to note that in the written statement originally filed on behalf of the defendants, a plea was raised that agreement to sell propounded by Balbir Singh, basis of the suit for possession by way of specific performance is the result of fraud and misrepresentation not binding on the defendants. However, in the said written statement, no particulars of the alleged fraud or misrepresentation have been given. After the parties have already adduced their evidence and the present petitioner examined himself as a witness on 28.04.2004, an application was filed by the respondent/plaintiff for amendment of the plaint that was allowed vide order dated 10.08.2004. The written statement filed by the defendants including the petitioner to the amended plaint contained additional facts by way of preliminary objection No.5 and on an objection raised by the respondent/plaintiff, the trial Court directed that the additional plea taken by the defendants is liable to be ignored vide order dated

31.10.2007. Any submissions made by the petitioner to challenge the order dated 31.10.2007 cannot be entertained much less accepted for the reason that the said order was never challenged before this Court and thus has attained finality. This apart, the defendants have waived their right to challenge the said order by filing an application for amendment of the written statement in order to raise the same allegations which were earlier set up by way of preliminary objection No.5. The application filed by the defendants for amendment of the written statement was initially dismissed by the trial Court vide order dated 03.11.2009, (Annexure P-9) challenged in CR No.7472 of 2009 decided on 30.09.2010 vide order Annexure P-10. The present petitioner was not a party to the aforesaid civil revision meaning thereby that he had no grievance to express with regard to declining his prayer for amendment of the written statement.

Before proceeding further, it is appropriate to mention that amendment of a written statement stands on a better footing than that of a plaint. Though, the proviso appended to Rule 17 of Order 6 has put certain restrictions on the rights of litigants to seek amendment of the pleadings after commencement of trial but still the Court is competent to allow amendment that is necessary for complete and effective adjudication of the matter in controversy and does not cause prejudice to the other side for which the other party cannot be compensated with costs and the application for amendment is not *mala fide*.

Hon'ble the Supreme Court of India in “**Revajeetu Builders & Developers vs Narayanaswamy & Sons & Others**”, 2010(1) RCR (Civil) 27, has culled out certain principles to be

considered for disposing of plea for amendment of pleadings.

Reverting to the case at hand, there is not even a whisper in the application as to how counsel who appeared on behalf of the defendants, filed the written statement and conducted proceedings is related/connected with Sh. Gurdev Singh, Advocate who purportedly obtained thumb-impressions/signatures of the defendants on blank papers on the pretext of initiating proceedings for partition of joint land. The petitioner has even gone to the extent of saying that he did not appear in the witness box and examined before the Court on 28.04.2004. A relevant extract from his plea, in this regard, in para 4 of the petition is quoted for ready reference:-

“..... The statement of witness has been recorded by way of affidavit and stereotype cross-examination has been made to get the decree for specific performance passed. Though, defendant No.1 did not appear as a witness in the case but his statement is there on the case file which is the result of big fraud and misrepresentation as he was under the impression that proceedings of partition are going on being an illiterate, old age and simpleton villager”.

A plain reading of the aforesaid allegations does not make the picture crystal clear much less that affidavit tendered by way of examination-in-chief either does not bear his (petitioner's) thumb-impressions or has been prepared on a paper(s) containing his blank thumb-impressions. He has also not denied his thumb-impressions on his statement recorded by the Court as a witness on 28.04.2004. The affidavit by way of examination-in-chief denies execution of agreement to sell dated 05.08.1999, receipt of Rs.4,00,000/-, thumb-impressions of

the defendants on the agreement with further allegations that agreement has been prepared by fraud and cheating by taking thumb-impressions on blank papers. As the petitioner apparently appeared in the witness-box, tendered into evidence his affidavit by way of examination-in-chief and thereafter cross-examined by counsel opposite, it is difficult to accept plea of the petitioner that application for amendment of the written statement is *bona fide* or not a *mala fide* one. This fact alone is sufficient to non-suit claim of the petitioner for amendment of the written statement at a stage when the parties have already adduced their evidence. Had the petitioner sought amendment before he was examined as a witness, the things might have been different. In the given facts and circumstances, I do not find any error much less illegality in the impugned order as would call for intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed.

05.08.2016
yakub

(REKHA MITTAL)
JUDGE

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