

Civil Revision No.4876 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4876 of 2016

Date of Decision:9.9.2016

Smt. Kumkum Rani

--- Petitioner

vs.

Savita Rani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Jayendra Sevada, Advocate
for the petitioner

Rekha Mittal, J.

The present petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (in short “CPC”) read with Article 227 of the Constitution of India directs challenge against order dated 30.5.2016 passed by the Civil Judge (Junior Division), Jagadhari whereby application

filed by the petitioner/defendants under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement has been dismissed.

Savita Rani and Prem Lata alias Meera Rani (respondent Nos. 1 and 2) have filed a suit for declaration that Savita Rani, plaintiff No. 1 is owner of land measuring 1 kanals 12 marlas, Prem Lata, plaintiff No. 2 is owner of 3 kanals 6 marlas, Kumkum Rani, petitioner/defendant No. 1 is owner of 11 kanals 18 marlas and Anil Kumar, defendant No. 2/respondent No. 3 is owner of land measuring 4 kanals 3 marlas in land measuring 107 kanals 5 marla, detailed in head note of the plaint, situated within the revenue estate of village Gulabnagar-404, Tehsil Jagadhri District Yamunanagar. The entries in the revenue record on the basis of mutation No. 102 are wrong, illegal, null and void, do not reflect correct position and are liable to be corrected. They have also prayed for consequential relief of permanent injunction restraining the petitioner/defendant No. 1 from transferring or creating any charge over the suit land.

The instant application for amendment of the written statement was filed by the petitioner, to make certain additions in preliminary objections para Nos. 2 and 3 and on merits in para 2, 7 to 9, 12 and 16, detailed in application (Annexure P-2)

The respondents/plaintiffs filed reply to the application and after having heard counsel for the parties in the light of materials on record, the learned trial court in view of its observations recorded in paras 9 to 13 eventually dismissed the application.

Counsel for the petitioner has submitted that mere fact that the application was filed after the respondents/plaintiffs have closed their evidence is not sufficient to deny claim of the petitioner to amend the written statement, necessary for complete and effective adjudication of the matter in controversy. It is argued that the learned trial court committed a serious error rather illegality by holding that as in the original written statement, the petitioner in para 3 of preliminary objections has averred that the plaintiffs and defendants have amicably partitioned the land vide which specific areas were allotted to each one of them in the year 1976 but by way of the proposed amendment, the applicant seeks to plead that as per the latest jamabandi, land is joint and the parties as well as the subsequent purchasers are co-sharers/co-owners to the extent of their share, therefore, she can not be permitted to amend the written statement to raise inconsistent and contradictory pleas. For this purpose, he has referred to judgment of Hon'ble the Supreme Court **Usha Balashaheb Swani and others vs. Kiran**

Appaso Swami and others, 2007 (2)RCR (Civl) 830.

I have heard counsel for the petitioner, perused the paper book particularly the annexures appended with the petition including the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to note that on an earlier occasion, the petitioner filed application dated 12.2.2014 seeking amendment of the written statement at the stage when the case was pending for evidence of the plaintiffs (to be precise for cross examination of Nitin Kumar Goyal PW1) but the said application was later withdrawn for the reasons best known to the petitioner. The instant application was filed on 1.9.2015 more than 1½ years since filing of the earlier application and that too after the respondents/plaintiffs have already closed their evidence. There is no explanation much less a satisfactory one that if the petitioner knew in February 2014 that written statement filed by her needs amendment, why the petitioner waited for such a long time for amendment of the written statement and that too after the other party has already concluded its evidence.

A plain reading of the application (Annexure P-4) would

indicate that in para 5, the petitioner has alleged, reads thus:-

“That while going through the pleadings as well as the documentary and oral evidence led by the plaintiffs, it transpired that plaintiffs have deliberately concealed material facts regarding sale deed No. 1148 and mutation No. 102. After making scrutiny of records of sale deed 1148 dated 21.6.1976 and while preparing the case for leading evidence on behalf of defendant No. 1 it has come to the knowledge of the applicant/defendant No. 1 that plaintiffs have intentionally with a malafide intention to usurp the property of defendant No. 1 raised the dispute regarding setting aside of mutation No. 102 which is annexed as mark D1/A sanctioned on 11.09.1976. It is evident from the photocopy of mutation No. 102 that defendant No. 2 who had also been the power of attorney holder of plaintiffs in addition to defendant No. 1 was present at the time of sanction of mutation No. 102 dated 11.09.1976.”

In the following para No. 6, it has been mentioned that now the

applicant/defendant No. 1 wants to amend her written statement in the following manner:-

“i. That in para No. 2 of the preliminary objection, the applicant wants to add one sentence at the end as following:-

“Defendant No. 2 submitted the application for sanctioning of mutation in favour of defendant No. 1 and in his presence got the mutation No. 102 dated 11.9.1976 sanctioned exclusively in favour of defendant No. 1 which in itself proves malafide on the part of the plaintiffs and defendant No. 2.”

ii In para No. 3 of the preliminary objections applicant wants to add and substitute as follows:-

“The plaintiffs have not come to the court with clean hands. After the purchase of total land measuring 107 kanals 5 marlas, till date, as per the latest jamabandi for the year 2013-2014 the total land is joint and all the plaintiffs and defendants alongwith subsequent purchasers are co-

owners/co-sharers to the extent of their share.

When plaintiffs and present defendants purchased land vide separate sale deeds they were owner in possession of specific shares, purchased by them by virtue of specific shares being sold to them along with possession and not specific area alone.”

iii In reply to para No. 2 on merits the word 'area' written in the 10th and 11th line be substituted by word 'share'.

iv In reply to para 7 and 8 on merits after the 10th line following line needs to be added by way of amendment.

The amendment sought is as follows:-

After the word, “Sanction” in the 10th line following sentence ought to be added:-

“As defendant No. 2 himself applied and was present at the time of the sanction of mutation No. 102 dated 11.9.1976. It is worth mentioning here that at this juncture of time defendant No. 2 was power of attorney holder not only of defendant No. 1 but also of plaintiff No. 2 which is evident from

sale deed No. 102/09.04.1976 and sale deed No. 106/09.04.1976 vide which plaintiff No. 2 purchased total land measuring 23 kanals 17 marlas. Furthermore, in the year 1990 Anil Kumar defendant No. 2 executed sale deed bearing No. 3323 dated 16.7.1990 sale deed hearing No. 3321 and sale deed No. 2319 both dated 16.7.1990 and 16.06.1990 on behalf of plaintiff No. 1 as her attorney holder. It is apparent from such act and conduct of plaintiffs and defendant No. 2, who are actually part and parcel of same family alongwith applicant in that; Savita Rani plaintiff No. 1 is wife of Ravinder Goel s/o Pirthi Nath, Prem Lata @ Meera Rani plaintiff No. 2 is wife of Virender Goel s/o Pirthi Nath and defendant No. 2 Anil Kumar is s/o Pirthi Nath. Similarly current applicant/answering defendant No. 1 is wife of Bhupinder Goel s/o Pirthi Nath and that sanction of mutation No. 102 dated 11.9.1976 was well

within the knowledge of the plaintiffs as well as defendant No. 2 firstly in the year 1976 and subsequently in 1990.”

- v. In reply to para No. 9 on merits in the fifth line word 'area' be substituted with word 'share' and words 'in oral partition' be substituted by 'joint land as per jamabandi for the year 1973-74 till date i.e. Jamabandi for the year 2013-2014. Furthermore after the last sentence in para No. 9 following sentence be added:-

“the land in question measuring 107 kanals 5 marlas had never been partitioned by metes and bounds nor by any other mode. Moreover, all the land in question had been purchased qua specific share of the then vendors and not of specific area.”

- vi In reply to para No. 12 on merits following words be added in the second line after 'it is wrong that the...'

“plaintiff Nos. 1 and 2 alongwith defendant No. 2 is a co-sharers in the land measuring 11 kansls 18½ marlas purchased vide sale deed No. 1148 dated 21.06.1976.”

vii In end of para No. 16 on merits of the written statement applicant/defendant No. 1 is desirous to make following amendment by way of addition at the end.

“since the plaintiffs have concealed the true facts, plaintiffs have no cause of action to file the present suit which is also barred by limitation.”

It is an undisputed position of the case that the petitioner has already averred in the original written statement in preliminary objection No. 2 that at the time of sanction of mutation No. 102 on 2.9.1976 qua sale deed No. 1148 in favour of the answering defendant/petitioner, Anil Kumar, defendant No. 2 was not only a general power of attorney holder of the answering defendant but he was also acting as a general power of attorney of both plaintiffs and on his own account. As such, plaintiffs and

defendant No. 2 were in the knowledge of sanction of mutation No. 102 in favour of the answering defendant from the date of its sanction. It appears that this plea was raised by the petitioner in order to counter challenge to aforesaid mutation No. 102 of 1976 in a suit filed sometime in the year 2012. It is difficult to understand from the application filed by the petitioner as to how on the basis of averments set up in para 5 of the application, the petitioner became entitled to seek amendment of the written statement in the manner depicted in sub paras (i) to (vii) of para 6 of the application. As a matter of fact, there is no explanation by the petitioner as to why the facts sought to be incorporated by way of amendment reproduced in para 6 of the application could not be pleaded in the written statement originally filed. It further appears that the petitioner has sought to amend the written statement on mere asking but the same is not permissible in law. Under these circumstance, the application filed by the petitioner does not admit of any explanation seeking amendment of the written statement much less to satisfy the requirements envisaged by proviso to Rule 17 of Order 6 CPC. Counsel for the petitioner has even failed to advance any meaningful arguments as to how the proposed amendment is necessary for complete and effective adjudication of the matter in controversy.

This brings the Court to the plea that the defendants can raise contradictory/inconsistent pleas in defence. It may be permissible to raise alternative or even contradictory pleas in the written statement but no litigant can be allowed to take a complete somersault without explaining his/her position. In the instance case, in the original written statement in para 3 of preliminary objections, it has been pleaded that the parties have amicably partitioned the land whereby specific areas were allowed to each of the parties in the year 1976 for further sale but by way of the proposed amendment, she wants to change her plea altogether by averring that the land is joint of the parties as well as the subsequent purchasers. As has been noticed hereinbefore but for the sake or repetition, there is no explanation as to how and why the petitioner is withdrawing from her earlier stand that land was partitioned and now seeking to allege that land is joint amongst the co-owners/co-sharers. Analyzed from any angle, it can be safely concluded that application filed by the petitioner for amendment is not bona fide, therefore, the trial court has rightly refused to exercise its discretion in favour of the petitioner.

For the foregoing reasons, the petition fails and is accordingly

dismissed in limine.

(Rekha Mittal)
Judge

9.9.2016
paramjit

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