

Civil Revision No.4985 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4985 of 2016

Date of Decision:05.08.2016

Divya Goyal and others

---Petitioners

vs.

Vinay Kumar Mohindra

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.P.K.Jain, Advocate
for the petitioners

Rekha Mittal, J.

The present petition directs challenge against order dated 20.7.2016(Annexure P-13) passed by Civil Judge (Junior Division) Ludhiana whereby the applications (Annexures P-9 and P-11) filed by the respondent/plaintiff for amendment of the plaint, have been allowed.

The respondent/plaintiff has filed a suit for possession of plot measuring 742 square yards, detailed in head note of the plaint by

challenging three sale deeds, described in head note of the plaint and consequential relief of permanent injunction restraining the defendants/petitioners from raising construction or alienating the suit property in any manner. Further relief for mesne profits for use and occupation of the suit property by way of mandatory injunction has been sought.

Before issues were framed and trial got commenced, the present application was filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (in short “CPC”) for amendment described in para 3 sub paras (A) to (F). Para 6-A detailed in sub para (D) has been sought to be added and on the basis thereof, additional relief of mandatory injunction directing the defendants to return the original sale deed by way of addition in para 10 of the plaint, detailed in sub para (F) has been sought.

After having heard counsel for the parties, the learned trial court held in favour of the respondent/plaintiff and the application for amendment as well as supplementary application giving some clarification in the earlier application were allowed.

Counsel for the petitioners has challenged the impugned order

to the extent of allowing addition of para No. 6-A and addition in para 10 seeking mandatory injunction directing the defendants to return the original sale deed bearing wasika No. 4045 dated 13.5.1993.

To assail the impugned order, counsel for the petitioner has three fold submissions to make. The first submission made by counsel is that as per the allegations set up in para 3 of the plaint (Annexure P.1), Kasturi Lal defendant No. 1/petitioner No. 3 took possession of the suit property illegally from the plaintiff in the month of December 2009, therefore, it can be presumed that he lost possession of the original sale deed at that time. A suit for mandatory injunction for return of movable property can be filed within a period of three years in view of provisions of Article 69 of the Limitation Act. As the present application for amendment has been filed in the year 2013, in case the respondent is allowed to amend the plaint to add the relief of mandatory injunction directing the defendants to return the original sale deed, a claim which is otherwise barred by limitation would be allowed to be added in the original plaint filed in the year 2011, therefore, a serious prejudice would be caused to the petitioners that cannot be compensated by way of costs.

Another submission made by counsel is that in the suit instituted in the year 2011, there is not even a whisper as to who is in possession of the original sale deed dated 13.5.1993, basis of the suit claiming title to the suit property entitling the respondent to recover possession. The respondent did not comply with the provisions of Rule 14 of Order 7 CPC which mandatorily requires a plaintiff to enter documents in his possession or power upon which he relies upon in support of his claim in a list and produce it in Court when the plaint is presented and a copy thereof is required to be filed with the plaint. Sub Rule (2) of Rule 14 further provides that where any such document is not in possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. In addition, it is submitted that both sets of defendants, defendants No. 1 and 2, defendants No. 4 and 5, filed separate applications under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint. In response, the respondent/plaintiff has denied that he surrendered his claim and handed over the original sale deed to defendant No. 1. It was further alleged that he had submitted the original sale deed to the police officials during the course of enquiry as they had demanded the

same but defendant No. 1 in a clever manner took the same in his possession in connivance with the police officials. By relying upon the aforesaid averments, counsel would urge that the said enquiry must have been initiated by the police on the basis of a complaint purported to be made by the respondent in October 2008, therefore, the respondent lost possession of the original sale deed in October 2008 and thus, the present application for amendment filed in the year 2013, if allowed, would amount to entertaining a claim clearly barred by limitation.

Counsel for the petitioner has made a vain attempt to argue that as neither the Station House Officer of the concerned police station nor the concerned police official with whom the original sale deed was submitted by the respondent/plaintiff has been impleaded as a party, application for amendment to add the relief of mandatory injunction is liable to be dismissed.

I have heard counsel for the petitioners, perused the impugned order and the various annexures appended with the petition.

The petitioners/defendants filed two separate applications under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint. It

was alleged that the original sale deed No. 4045 dated 13.5.1993 was surrendered to defendant No. 1 by the plaintiff and defendant No. 1 handed over coloured photocopy of the sale deed to defendant Nos. 4 and 5. Defendant Nos. 4 and 5 have claimed to be bona fide purchasers for valuable consideration without notice of the suit property. As has been noticed hereinbefore, the respondent in the reply has denied the factum of surrender of the original sale deed to defendant No. 1 with the plea that he submitted the original sale deed to the police officials during the course of enquiry as they had demanded the same. No doubt, in the reply, it has not been specifically mentioned as to when the respondent submitted the original sale deed to the police. As per allegations in the plaint, the respondent made a complaint to the police when defendant No. 1 tried to take possession of the suit property illegally in October 2008. It has further been averred that defendant No. 1 took possession of the suit property illegally in December 2009. It is difficult to assume and presume that the respondent/plaintiff submitted the original sale deed either in October 2008 or in December 2009 or subsequent thereto. As the respondent appears to be not aware that the original sale deed was in possession of the

petitioners/defendants nor he knew as to when defendant No. 1 came in possession of the said sale deed having been allegedly handed over to him by the police officials, it is difficult to accept contention of the petitioners that claim of the petitioners seeking relief of mandatory injunction for recovery of original sale deed is clearly barred by limitation and thus, his application for amendment of the plaint is liable to be dismissed. I would hasten to add that as per plea of the petitioners raised in the application under Order 7 Rule 11 CPC, the respondent/plaintiff surrendered the original sale deed to defendant No. 1 but they are silent as to when the plaintiff surrendered the original sale deed to defendant No. 1 when otherwise, defendant No. 1 could be certain and sure of the same.

So far as plea of failure of the respondent to comply with the provisions of Rule 14 of Order 7 CPC, the said fact is not relevant for deciding the application for amendment and the said issue may be raised by the petitioners, if so advised, at an appropriate stage of the proceedings during the course of trial.

The plea of the petitioners that the application for amendment is liable to be dismissed for want of impleading the police officials as a

party is highly misconceived and merits rejection. As the petitioners have alleged themselves to be in possession of the original sale deed, where arise the occasion for impleading the police officials as a party for seeking relief of mandatory injunction. In the circumstances of the case, the police official(s) may be a necessary witness(s) to establish plea of the respondent that he had submitted the original sale deed with the police during course of an enquiry. In the given facts and circumstance, the learned trial court has rightly held that the question of limitation is a mixed question of law and fact to be decided on the basis of evidence to be adduced by the parties.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed in limine. However, nothing stated in this order shall prejudice either of the parties at the time of final disposal of the suit on merits.

(Rekha Mittal)
Judge

05.08.2016

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No