

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5034 of 2015 (O&M)

Date of decision:29.11.2016

Man Mohan Singh

... Petitioner

Vs.

Nishan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lekh Raj Sharma, Advocate
for the petitioner.

Mr. Kul Bhushan Sharma, Advocate
for respondents No.4 to 9.

Mr.R.K.Sharma, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Petitioner/defendant No.9, who later on transposed as plaintiff No.3 is aggrieved of the impugned order dated 10.07.2015, whereby, an application seeking amendment of the plaint by incorporating paragraph 5 (A) and 8(c) in the plaint, has been dismissed.

Mr. Lekh Raj, learned counsel for the petitioner submits that the suit aforementioned, was earlier filed by Nishan Singh and Sukha Singh son of Sh. Gokha Singh challenging the registered General Power of Attorney dated 03.12.1986 executed by Gokha Singh in favour of defendant No.1-Balkar Singh and by arraying the petitioner as defendant No.9, who vide sale deed dated 20.02.2006 had purchased the part of the property.

Though his sale deed was not under challenge but at later point of time realized that both Nishan Singh and Sukha Singh were not prosecuting the suit with due diligence. It is in this background of the matter, the transposition was allowed.

During the evidence of defendants No. 2 to 7, it realized the Gokha Singh, in his individual capacity had also executed registered lease deed dated 03.12.1986, of the same date of GPA in favour of the defendants. It is in this aspect of the matter, the amendment was sought to be incorporated. There is limitation to challenge the lease deed. The defendants would have all right to take all possible objections in the written statement, in case the Court allows the amendment sought to be incorporated subject to any terms and conditions.

Mr. Kul Bhushan Sharma, learned counsel for respondents No.4 to 9/defendants No.2 to 7 submits that the amendment sought in the year 2015 is highly belated and barred by law of limitation, much less do not suffice the compliance of the amended provisions of Order 6 Rule 17 CPC as there is no use of expression “despite exercise of due diligence”. He further submits that plaintiff is a stranger to the lease deed and therefore, would not have any grievance/cause of action to seek the amendment and thus urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

The amendment sought reads as under:-

“5(A) That the lease deed No.9121 dated 03.12.1986 in favour of Surjeet Singh, Jasbir Singh, Bhajan Singh, Gurdeep Kaur, Sulvinder Singh and Kulvinder Singh was also never executed by Sh. Gokha Singh during his left time said lease deed is a forged document absolute wrong, null, void and a frivolous document and the same has meant in the eyes of law and liable to be cancelled in all respect, which is not binding upon the applicant/plaintiff and performa defendants No.10 to 12.”

8 *That a new para in the prayer clause(c) may be added as under:-*

© *A decree of declaration to the effect that the impugned lease deed no.9121 dated 03.12.1986 allegedly executed by late Sh. Gokha Singh in favour of Surjeet Singh, Jasbir Singh, Bhajan Singh, Gurdeep Kaur, Sulvinder Singh and Kulwinder Singh regarding the disputed property is wrong, illegal, null and void and same are not binding upon the plaintiff No.3 and performa defendant No.10 to 12 in nay manner whatsoever and it is liable to be cancelled, may kindly be passed in favour of plaintiff against the defendants No.1 to 7.”*

Without delving on the point of limitation of the lease deed, *prima facie*, I am of the view that though there is no limitation to challenge the lease deed but the observation of mine would not take away the right of the contesting defendants to take all possible objections *vis-a-vis* limitation or other provisions of law but the fact remains that the amendment sought to

be incorporated is essential and necessary, for, challenge in the suit is regarding the registered General Power of Attorney dated 03.12.1986 and the lease deed is also of the same date. In order to prove the same, the plaintiff would be requiring at least two effective opportunities and equal opportunities to the defendants after completion of the formalities qua pleadings. The defendants would be able to shatter the case of the plaintiff in evidence, if the amendment according to him, is found to be non-maintainable on the grounds referred above but in my view, it would be essential and necessary to allow the plaintiff to incorporate paragraph 5(A) and 8 (c) in the plaint. However, the same shall be subject to costs of ₹12,500/- to be paid to Mr. Kul Bhushan Sharma, Advocate for respondents No.4 to 9/defendants No.2 to 7.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 29, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No