

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.6217 of 2016 (O&M)

Date of Decision.03.11.2016

Dass Ram (since deceased) through LRsPetitioner

Vs

Ashok Kumar and othersRespondents

2. C.R. No.7028 of 2016 (O&M)

Ashok KumarPetitioner

Vs

Dass Ram (since deceased) through LRsRespondent

Present: Mr. Ajay Jain, Advocate
for the petitioner in CR No.6217 of 2016 and
for respondent No.1 in C.R. No.7028 of 2016.

Mr. Munish Jolly, Advocate with
Mr. Vishal Gupta, Advocate
for the petitioner in C.R. No.7028 of 2016 and
for respondent No.1 in C.R. No.6217 of 2016.

Mr. Sanjay Mittal, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions. Revision Petition No.6217 of 2016 is at the instance of Dass Ram (since deceased) through his legal representatives-plaintiff against the order dismissing the application seeking demarcation of the plots bearing No.EP-122 and 149 whereas the other revision petition bearing No.7028 of 2016 is at the instance of defendant No.1 who is aggrieved of the dismissal of the application seeking incorporation in paragraph 5 of the written statement by way of amendment.

C.R. No.6217 of 2016 submits that the petitioner was allotted with the plot bearing No.EP-122 from Custodian Department, which was accompanied by a site plan. On the contrary, defendant No.1 namely Ashok Kumar, was allotted with plot bearing No.EP-149 on 03.02.1986 with site plan giving dimensions and measurements of the property, however, in the sale deed dated 21.12.2011 executed by defendant No.1 in favour of defendant No.2, there is a complete sea-change with regard to the description. In fact, the description is totally tallying with plot bearing No.EP-122. It is in this backdrop of the matter, cause of action arose to file the suit and to seek assistance of Court for the purpose of demarcation. All these aspects have not been taken care and therefore, the present revision petition.

Mr. Munish Jolly, Advocate for the petitioner in C.R. No.7028 of 2016 submits that the amendment sought to be incorporated is most innocuous and explanatory in nature. It does not tantamount to withdrawal of admission. Even if it is so, nothing prevents respondents herein to cross-examine the witness of petitioner-defendant No.1 in this regard. The suit is at initial stage and the parameters for allowing the amendment in the plaint and written statement are totally different. The Courts should be liberal in allowing the amendment qua written statement.

Per contra, Mr. Sanjay Mittal, learned counsel appearing for respondent-defendant No.2 submits that location of the aforementioned plots falls within the Municipal Committee. It does not have any khasra numbers and in case, the application for demarcation is allowed, it would not be possible for the concerned person/official to demarcate the property as it is not possible to find the permanent points. The plaintiff is at liberty to lead evidence in respect of the averments but not in the manner and

mode.

He further submits that the plaintiff had already availed the services of the local commissioner and the second application is noting but delaying tactics to keep pressure hanging on defendant No.2 so that he may succumb to it, resulting into some compromise or concession, much less, any premium, thus, urges this Court for confirming the finding rendered by the Court below.

I have heard learned counsel for the parties and appraised the paper book. Shown facts above, sale deeds in favour of defendant No.1 and defendant No.2 and as well as the allotment in favour of plaintiff are not disputed. The only dispute which arose is with regard to site plans produced on record, accompanying the sale deeds and as well as Ex.PW1/1 and PW1/2.

At first blush, argument of Mr. Sanjay Mittal, learned counsel appearing for respondent-defendant No.2, looked attractive as there is a stark difference between Ex.PW1/1 and PW2/1 *viz-a-viz* the site plan being the parcel of the sale deed of 1986 but on close scrutiny of the same, I am of the view that there appears to be incorrect particulars of the dimensions particularly *viz-a-viz* the sale deed of 1986 in favour of defendant No.1 and 2011 in favour of defendant No.2. In this regard, I am of the view that the application at the instance of the plaintiff for seeking demarcation of the plot bearing Nos.EP-122 and 149 would be necessary and essential for adjudication of the *lis*, as the relief is not only for permanent injunction but for declaration also. However, the demarcation would be done subject to following terms:-

- (i) The demarcation would not be done by any advocate but

from the official of the erstwhile Custodian Department from whom the respective parties are deriving title. He will also take assistance of the Custodian Department *viz-a-viz* the measurements.

(ii) The measurement shall be done in the presence of the parties after giving due notice to the counsel as well as to the parties.

The impugned order is set aside and the revision petition bearing No.6217 of 2016 is allowed with the aforementioned directions,

As regards the contention of Mr. Jolly, learned counsel appearing for the petitioner in C.R. No.7028 of 2016 with regard to amendment of paragraph 5 of the written statement, I am of the view that defendant No.2, the subsequent vendee of Plot No.EP-149, will be well within her rights to ascertain the correctness of the averments in the cross-examination or while leading evidence in affirmative at the stage of her evidence. I am of view that the amendment sought to be incorporated would not seriously prejudice the rights of defendant No.2 as the parameters are more liberal while allowing amendment of the written statement than that of the plaint.

For the reasons aforementioned, the impugned order is set aside. The amendment application of defendant No.1 is allowed and the revision petition bearing No.7028 of 2016 is allowed with the above observations.

(AMIT RAWAL)
JUDGE

November 03, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No