

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

**CR No.6063 of 2014 (O&M)
Decided on: 08.04.2016**

Rajpal

....Petitioner

Versus

Rajender Kumar

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kamaljeet Singh, Sr. Advocate
with Ms. Jaswinder Kaur, Advocate
for the petitioner.

Mr. Sharad Aggarwal, Advocate
for Mr. Lokesh Sinhal, Advocate
for the respondent.

REKHA MITTAL, J.

The present petition lays challenge to order dated 21.08.2014 (Annexure P-8) passed by the Civil Judge (Junior Division), Faridabad, dismissing application of the petitioner for amendment of the written statement.

Rajender Kumar, the real brother of the petitioner has filed a suit for possession claiming himself to be owner in possession of a residential house measuring 66.6 sq. yds. on the basis of sale deed dated 03.05.1990 purported to be executed by one Kale Ram through his special attorney and the plaintiff/respondent has permitted the petitioner to reside in the house. The petitioner filed the written statement controverting the allegations set-up in the plaint with the averments that the suit property was previously owned by father of the parties and after his demise, the same is co-owned by the three brothers in equal share.

The trial Court framed issues on 27.08.2012 and the plaintiff/respondent closed his evidence. Thereafter, evidence was adduced by the petitioner/defendant who later filed the instant application for amendment of the written statement. By way of the proposed amendment, the petitioner sought to raise a plea that the alleged sale deed is wrong, illegal, null and void and creates no title in favour of the plaintiff as Khasra No.4/25 was acquired by the Government of Haryana and Kale Ram was left with no title and the suit property is a part of Khasra No.4/25. As a result, he proposed to add another preliminary objection (Objection No.1 (a)) detailed in Para 5 of the application (Annexure P-6).

Counsel for the petitioner would contend that the learned trial Court committed a gross error rather illegality by dismissing the application without appreciating that the facts sought to be pleaded by way of amendment were not to the knowledge of the petitioner at the time of filing of the original written statement though the said facts are relevant and material for adjudication of the matter in controversy. It is further submitted that no prejudice would be caused to the respondent in case the proposed amendment is allowed as he would get an opportunity to file replication to controvert the additional facts.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that the learned trial Court on a detailed consideration of the matter has rightly rejected claim of the petitioner when admittedly the application for amendment was filed at a highly belated stage after the parties have already adduced their

evidence.

I have heard counsel for the parties, perused the records particularly the plaint (Annexure P-1), written statement (Annexure P-2), sale deed propounded by the respondent/plaintiff (Annexure P-3), application for amendment of the written statement (Annexure P-6), reply to the application (Annexure P-7) and the impugned order (Annexure P-8).

The application for amendment was filed under Section 151 of the Code of Civil Procedure (in short 'CPC') despite there being a specific provision dealing with amendment of pleadings i.e. Order 6 Rule 17 CPC. As per the settled position in law, the Court should refrain from exercising its inherent jurisdiction wherein a specific provision has been made to deal with a particular situation. It appears to the Court that the application has been filed under Section 151 CPC with a clever attempt to escape from the implications of proviso appended to Rule 17 by way of amendment in the year 2002.

The petitioner in Paras 2 to 4 has narrated certain facts and thereafter has mentioned that as these facts came in light during the course of evidence after filing of the written statement, hence the defendant could not insert these facts in his written statement which are necessary for proper adjudication of the case, hence the defendant wants to amend the written statement to the following effect by adding after the preliminary objection No.1, preliminary objection No.1(a). The contents of preliminary objection No.1 (a) are detailed as such under the sub-head 1(a) of Para 5. A plain and casual reading of the

contents of preliminary objection No.1(a) do not indicate that the petitioner as the defendant by way of amendment intended to challenge the sale deed bearing No.1239 dated 03.05.1990 on any ground whatsoever much less on the ground of fraud and misrepresentation. Further the reading of this para indicates as if this amendment has been sought to be made by the plaintiff and not by the defendant because by way of preliminary objection No.1(a), it has been sought to be pleaded to deny the allegations if any raised by the defendant in the written statement.

This apart, the petitioner has denied claim of the respondent/plaintiff *qua* ownership of the suit property by raising specific plea that the house in question was previously owned by father of the parties which was later inherited by the parties along with their third brother on the basis of natural succession. There is no explanation or justification by the petitioner that in view of his earlier stand in the written statement how can he be permitted to amend the written statement in order to say that the suit house or land underneath the house stands acquired by the State of Haryana. Furthermore, the learned trial Court has dealt in detail the earlier proceedings that remained pending between Kale Ram and Haryana Urban Development Authority and the suit filed by Kale Ram having been allowed to be withdrawn with permission to file a fresh one on the same cause of action. Analyzed from any angle, I find myself unable to accept the submissions of counsel for the petitioner that the order passed by the trial Court either suffers from any illegality much less perversity or the

application filed by the petitioner for amendment of the written statement is required to be allowed for complete and effective adjudication and just decision of the case. Examined from another angle, if it is proved on record that the suit house is a part of Khasra No.4/25 and the same stood acquired by the State of Haryana, the trial Court may, in accordance with law, take into consideration the materials on record and any such evidence may negate claim of the respondent/plaintiff *qua* ownership of the suit property on the basis of sale deed propounded by him, purported to be executed by Sh. Kale Ram.

For the reasons aforesaid, the petition is dismissed leaving the parties to bear their own costs.

08.04.2016
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(REKHA MITTAL)
JUDGE