

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6297 of 2014 (O&M)
Date of decision:04.04.2016

Suresh Pal and others ... Petitioners

Vs.

Sona Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Aman Pal, Advocate
for the petitioners.

Mr. Madan Pal, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The petitioner-plaintiffs are aggrieved of the dismissal of the application filed under Order 6 Rule 17 of the Code of Civil Procedure converting the suit for permanent injunction to suit for declaration on the premise that there is already pleading in this regard.

Mr. Aman Pal, learned counsel appearing on behalf of the petitioner-plaintiffs, in support of the grounds of revision, has relied upon the judgment of the Hon'ble Supreme Court in **Abdul Rehman and another vs. Mohd. Ruldu and others 2012(3) Apex Court Judgments 592 (S.C.)**. He further submits that a specific objection

vis-a-vis maintainability of the suit can always be decided as a preliminary issue. In case, the amendment is allowed, the trial Court can frame an additional issue on the basis of the amendment being allowed, thus, urges before this Court for setting aside the impugned order.

Mr. Madan Pal, learned counsel appearing on behalf of respondent No.1 submits that similarly situated petitioner-plaintiffs had also filed a suit challenging the sale deed dated 5.5.2008 and the said suit was dismissed and application before the Lower Appellate Court was filed which was decided and the said order was upheld vide CR No.6210 of 2014 decided on 31.10.2014. The petitioner-plaintiffs had knowledge of seeking declaration, thus, declaration is ex facie time barred, therefore, having omitted to claim such plea would tantamount to non-maintainability of the suit in view of the provisions of Order 2 Rule 2 of the Code of Civil Procedure, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that instead of pondering upon the merits and de-merits of the suit vis-a-vis maintainability of the suit or Civil Court had jurisdiction to try and decide the same, I deem it appropriate that the amendment sought to be incorporated should be allowed as there is already an averment in paragraph 10 of the suit vis-a-vis challenge to the sale deed. For the sake of brevity paragraph 10 of the suit and amendment sought reads thus:-

Paragraph 10 of the suit

“That the defendant No.3 on the basis of above said illegal orders and mutations, further executed a sale deed dated 5.5.2008 in favour of defendant No.1. The defendant No.3 was and is not owner in possession of any part or portion of khasra no.220/2(5-4) and as such, he was no competent to sell any part of portion of the said land nor he ever remained in possession of any part of khasra no.220/2, so the question of handing over the possession of the land vide sale deed dated 5.5.2008 does not arise at all. The alleged sale deed is also illegal, null and void and not binding on the rights of the plaintiffs.”

Amendment sought to be incorporated

“Suit for declaration with permanent injunction” and also amendment in prayer para, a new para No.1(A) i.e. A decree for declaration to the effect that the order dated 27.02.1981 passed in case No.80/SC by Sh. Shankar Lal Sehrawat the then Ld. Special Collector, Kurukshetra, decree sheet, mutation No.188, order dated 04.01.1984, sale deed No.755 dated 05.05.2008, mutation No.325 and subsequent revenue record on the basis of same, are all illegal, null, void, ab-initio, bogus documents, result of fraud and fabrication and the same are not binding on the rights of the plaintiffs and the same are also barred by the principles of estoppels and the same be declared as illegal, null and void document as such, may kindly be passed in favour of the plaintiffs against the defendants with costs and the plaintiffs be declared as owner in possession of the suit land.”

Accordingly, application seeking amendment is allowed.

This would be without prejudice to the rights of the respondent-defendants vis-a-vis jurisdiction of the suit, much less, limitation aspect. Since this Court is allowing the application for amendment, in case, issue qua jurisdiction has not been framed, I deem it appropriate to frame the additional issue which reads thus:-

“Whether the Civil Court has jurisdiction in altering nature of civil suit challenging the order passed by the Collector in view of the provisions of Punjab Village Common Land Act or not, onus on parties?”

The aforementioned issue shall be treated as preliminary issue. Both the parties shall be given 2-2 effective opportunities to lead evidence in respect of aforementioned issue.

Keeping in view the aforementioned facts, the impugned order is set aside and the revision petition is disposed of in terms of the aforementioned directions, subject to payment of costs of ₹5,000/-.

(AMIT RAWAL)
JUDGE

April 04, 2016
savita