

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 8773 of 2015

Date of Decision:- 13.01.2016

Mahender Singh

...Petitioner

Versus

Rohtash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. P.K.Rohilla, Advocate,
for petitioner.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India for setting aside the order dated 05.12.2015 passed by Civil Judge (Jr. Division), Kharkhoda, Sonapat, whereby the application for amendment of plaint of the petitioner/plaintiff was dismissed.

2. Learned counsel for the petitioner submits that application under Order 6 Rule 17 CPC was filed before trial Court to amend the plaint and change the number of suit land. Plaintiff Mahender Singh has filed suit for permanent injunction on the ground that agricultural land measuring 05 kanal bearing Rect. And Killa No.12/4/2(0 kanal-12 marla) 13/16/2(2 kanal-0 marla), 24/2(2 kanal-8 marla) situated in the area of Village Khurampur, Tehsil Kharkhoda, District Sonapat used to be owned and possessed by the father of the plaintiff, Bhim Singh, Prem Singh sons of Ram Narain r/o

Village Khurampur, Tehsil Kharkhoda, District Sonapat who sold the same to defendant vide registered sale deed No.435 dated 07.08.1996 for a consideration of Rs.1,20,000/- and mutation No.540 was sanctioned on 27.06.1997. Plaintiff used to cultivate Killa No.13/16/2 (2 kanal-0 marla) for the last more than 40 years. Defendant in the Court below filed written statement admitting para No.1 that Killa No.12//4/2 (0 kanal-12 marla), 13//16/2 (2 kanal- 0 marla), 24/2 (2 kanal-8 marla), total measuring 5 kanals was sold away by Rakhey (father of the plaintiff), Bhim Singh and Prem Singh sons of Ram Narayan to defendant vide registered sale deed dated 07.08.1996. However, plaintiff never cultivated killa No.13//16/2 measuring 2 kanal-0 marla.

3. Vide present application, petitioner took the plea that land comprised in rectangle and killa No. 13/16/1 (1 kanal-9 marla) situated towards Village Pai was sold and it was wrongly written in the sale deed as rectangle and killa No.13/16/2 (2 kanal-0 marla) in place of rectangle and killa No. 13/16/1 (1 kanal-9 marla) and the plaintiff had been in cultivating possession of land comprised in rectangle and killa No.13/16/2(2 kanal-0 marla). This fact was denied by the respondent in the written reply.

4. As per plaintiff, he used to cultivate Killa No.13/16/2 (2 kanal-0 marla) for the last more than 40 years and before that the father of the plaintiff Rakhey Ram son of Ram Narain used to be the owner in possession of the same. For that purpose application was filed before the Court below but the same was declined. It is prayed that petition be allowed.

5. Having considered the submissions made by learned counsel for the petitioner this Court is of the considered view that trial Court has rightly formed the opinion that the plaintiff has been claiming ownership

and possession of rectangle and killa No.13/16/2 (2 kanal-0 marla) and not rectangle and killa No. 13/16/1 (1 kanal-9 marla). The proposed amendment has been sought when the issues have already been framed and case was fixed for final arguments.

6. I am of the considered view that learned trial Court has rightly declined the proposed amendment as the same shall change the nature of the litigation altogether. Issues have already been framed by the parties. The parties led their respective evidence and the case was fixed for final arguments. Even as per amended provisions of law incorporated under Order 6 Rule 17 CPC do not permit such an amendment after commencement of trial of the case. That way the proposed amendment was rightly declined by the Court below vide impugned order dated 05.12.2015 (Annexure P-5).

7. In view of above, there is absolutely no illegality calling for setting aside the order and as such the present petition stands dismissed.

January 13, 2016
mohan

(SHEKHER DHAWAN)
JUDGE