

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-926-2015

Decided on : May 09, 2016

GIAN CHAND GOEL

....Petitioner

VERSUS

ANKUSH GOEL

....Respondent

CORAM : HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Piyush Kant Jain, Advocate
for the petitioner.

Mr. Hitesh Ghai, Advocate
for the respondent.

K. KANNAN, J (ORAL)

1. The revision petition is filed by the defendant who is aggrieved about the order of amendment passed by the trial Court. It was a suit for injunction filed by the plaintiff claiming himself to be the owner and when the defendant was setting up a plea that the property belonged to Ram Sarup, the plaintiff sought to bring an amendment referring to an alleged Will said to have been executed by Ram Sarup in favour of his father. The father is reported to be still alive. The Court has allowed the amendment to take place.

2. I will find the nature of amendment brings the plea regarding the source of title differently than how it was stated in the plaint. It was never the contention in the plaint that the plaintiff's father was owner of the property under bequest made by Ram Sarup in his favour. When the father

is still alive, there is no question of transmission of interest in relation to immovable property to the plaintiff to claim ownership. The counsel says that there are authorities to the effect that at the stage of amendment the Court will not consider the merits. It will not mean that at the stage, the Court will not pronounce on the validity of the Will itself. The relevance for the plaintiff to seek for injunction and declaration that the property belongs to him cannot be substituted by the new pleading that the property did not belong to him but it belongs to his father and his father is still alive.

3. The counsel for the respondent argues that in a suit for injunction, title is not relevant. This again is wrong statement of law. It all depends on how the plaintiff is putting his case to seek for the relief. If the relief is sought on a plea that he got title to the property, then he shall prove the same for which an action for injunction is sought and if the defence by a person claiming to be the owner, is established the relief of injunction even if he proves his possession.

4. It will be completely different if the suit itself is based on the basis of previous possession and on contention made that the defendant is the owner. In that case, plaintiff's own possession shall not be disturbed otherwise than in accordance with law. In such a case, the plaintiff can obtain an order of injunction either against the owner on a fundamental position that he concedes ownership of the defendant before asking for injunction.

5. A person who is not the owner but also denying ownership of the defendant cannot secure the relief even if he proves his possession. In this case, the amendment sought is inconsistent to the previous pleading and

therefore it shall not be permitted to be brought. The amendment allowed is erroneous and will cause very serious prejudice to the defendant who pleads his own right to ownership as an heir to Ram Sarup, the previous owner.

6. The impugned order is set aside and the revision petition is allowed.

May 09, 2016
Rajneesh

(K. KANNAN)
JUDGE