

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1149 of 2017 (O&M)
Date of decision: 08.03.2017

Mukhtar Singh

... Petitioner

Vs.

Sulakhan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.K. Mahajan, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition, at the hands of defendant No.2, filed under Article 227 of the Constitution of India, is directed against the order dated 21.11.2016 (Annexure P-1) passed by the learned trial Court, thereby dismissing the application under Order 6 Rule 17 of the Code of Civil Procedure ('CPC' for short) filed by the defendants.

Heard learned counsel for the petitioner.

A bare combined reading of the plaint (Annexure P-4), written statement filed by the defendants, including the petitioner (Annexure P-5), application moved by the defendants under Order 6 Rule 17 CPC (Annexure P-2), reply filed by the plaintiffs to the application for amendment (Annexure P-3) and the impugned order (Annexure P-1) will make it crystal clear that the learned trial Court was well within its jurisdiction to pass the impugned order. It

is so said because the petitioner wanted to change his stand altogether, which is not permissible in law. Having said that, this Court feels no hesitation to conclude that the impugned order has not been found suffering from any patent illegality or perversity and the same deserves to be upheld.

When filed their written statement (Annexure P-5), defendants, including the petitioner, denied the title of the plaintiffs and claimed themselves to be co-sharers in possession of the suit land. Pleadings of the parties were complete and thereafter, appropriate issues were framed by the learned trial Court. Trial commenced and the plaintiffs had already examined three witnesses, before passing the impugned order dated 21.11.2016. It was at this stage that defendants moved the application for amendment seeking amendment in their written statement to the effect that they were not co-sharers in possession of the suit land, but defendant No.1 was mortgagee in possession of the suit land and Makhan Singh-plaintiff No.2 was mortgagor.

Keeping in view the totality of facts and circumstances of the case, this Court is of the considered view that neither the petitioner-defendant No.2 was a bonafide litigant nor he was seeking a legitimate and honest amendment in his written statement. In fact, he has been found misusing the process of law and trying to play smart with the plaintiffs as well as with the Court. In this view of the matter, the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

It is the settled proposition of law that amendment cannot be claimed as a matter of right and under all circumstances. The relief of amendment is a discretionary relief. No doubt, the Court of competent

jurisdiction would exercise the discretion judiciously and amendment should not be declined adopting a hyper-technical approach. However, it is equally true that litigants seeking amendment in the pleadings, must come to the Court with clean hands, seeking a bonafide, legitimate, honest and necessary amendment. Whosoever is not a bonafide litigant and seeks a dishonest and malafide amendment in his pleadings, would not be entitled for amending his pleadings.

In the present case, as noticed hereinabove, petitioner has been caught at the wrong foot, while taking the justice delivery system for a ride. Initially, he put a false claim and thereafter, during the course of proceedings, when plaintiffs have already examined three witnesses, petitioner-defendant No.2 tried to take a somersault, with a view to change his stand altogether, seeking amendment in his written statement. Under these circumstances, it can be safely concluded that the learned trial Court was well justified in passing the impugned order and the same deserves to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Gautam Sarup Vs. Leela Jetley and others, 2008 (7) SCC 85 (SC)***
2. ***Ramesh Kumar Aggarwal Vs. Rajmala Export Pvt. Ltd., 2012 (2) Civil Court cases 292 (SC).***
3. ***Manohar Lal Vs. Sunder Lal and others, 2005 (2) RCR (Civil) 725 (P&H).***
4. ***K. Sethi Vs. Mascot Enterprises and others, 2010 (5) Law Herald 3974 (P&H)***

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this

Court, in the cases referred to hereinabove, it is unhesitatingly held that once the defendant-petitioner had taken a specific and categoric stand in his written statement, denying the title of plaintiffs, claiming himself to be co-sharer in possession over the suit land, he cannot be permitted to take a diametrically contrary stand, by amending his written statement to the effect that he was mortgagee with possession. Since the impugned order passed by the learned trial Court has been found in consonance with the law laid down by the Hon'ble Supreme Court as well as this Court and is also supported by sound reasons, the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

08.03.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No