

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 253

Civil Revision No.1992 of 2016 (O & M)
Date of Decision: May 10, 2017

M/s Samra Poultry Products Pvt. Ltd., Sahnewal Kalan, Ludhiana
..... PETITIONER

VERSUS

Superior Tools Company, Sahnewal Kalan, Ludhiana & others
..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Atul Goyal, Advocate, for the petitioner.

Mr. Viren Jain, Advocate, for the respondents.

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Jaspal Singh, J

1. Challenge in this revision petition preferred under Article 227 of the Constitution of India is for setting aside order dated November 17, 2015 passed by the Civil Judge (Junior Division), Ludhiana whereby an application moved by the petitioner – plaintiff under Order VI Rule 17 CPC for amendment of plaint, has been dismissed.

2. The petitioner – plaintiff filed a suit for permanent injunction restraining the respondents – defendants from dispossessing him and from interfering in his peaceful possession over the land measuring 13 Kanal 16 Marla (fully detailed and described in Para 3 of the petition), situated at Sahnewal Kalan – II, Ludhiana consisting of two rooms, one shed, boundary wall, illegally and forcibly without due course of law. In the

said suit, plaintiff has pleaded that he is owner in possession of the suit property on the basis of sale deeds of the year 1999, on the basis of which, mutation has also been sanctioned in the name of the company in the revenue record and also obtained electricity connection in the name of the Director of the company.

3. In response to the notice of suit, respondents – defendants filed written statement alleging themselves to be owners in possession of the suit property on the basis of sale deed No.21990 dated December 20, 1999 executed by the petitioner – plaintiff. It was only thereafter, the petitioner – plaintiff moved an application under Order VI Rule 17 CPC read with Section 151 CPC seeking amendment of the suit challenging sale deed dated December 20, 1999 to be a fraud and fabricated document.

4. After hearing learned counsel for the parties, appraisal of application as well as reply filed, application was dismissed vide impugned order dated November 17, 2015. Aggrieved against the said order, petitioner has approached this Court by way of instant revision petition.

5. Assailing the impugned order, it has been submitted by learned counsel for the petitioner the relief of amendment of the plaint has been declined by learned trial court simply on the ground that petitioner – plaintiff has not averred that he has become aware of the alleged sale deed after filing the written statement. However, said finding is absolutely against the record of the case. Infact, it was specifically mentioned by petitioner – plaintiff in the application that he became aware of the aforesaid sale deed dated December 20, 1999 at the time of filing of written statement. Moreover, actual and physical possession of the suit property is with the petitioner – plaintiff which also stands reflected in the revenue record.

framed arising out of pleadings of parties. In case the plaint is allowed to be amended, it is not likely to cause any prejudice to the respondents – defendants and would be helpful in adjudicating the matter in controversy effectively and judiciously. The petitioner did not execute sale deed dated December 20, 1999 which has been sought to be challenged by way of amendment of the plaint. It is also not likely to change the nature of suit. Thus, impugned order being unsustainable in the eyes of law is liable to be set aside. Resultantly, application deserves to be allowed.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any legal and factual substance therein.

7. Undisputably, petitioner – plaintiff filed a simple suit for injunction restraining the respondents – defendants from interfering in possession of plaintiff over the disputed property, illegally, forcibly and without due process of law. Though, it has been alleged by petitioner – plaintiff that sale deed No.21990 dated December 20, 1999 is a fake, fraudulent and fabricated document but it cannot be accepted at this stage, especially in the circumstances that petitioner – plaintiff is executant of the said sale deed. Thus, it cannot be said that he was not aware of the sale deed at the time he filed the suit for permanent injunction or prior to filing of written statement by the respondents – defendants. Thus, acceptance of application for amendment would certainly change the nature and character of suit/plaint, especially from a simple suit for injunction to a suit for declaration which is not permissible under law. Otherwise also, petitioner – plaintiff has sought to challenge sale deed which pertains to December 1999, in the year 2014 i.e. after an expiry of approximately 1 ½ decade, whereas

period of three years from the date of execution of sale deed. Thus, amendment sought is also absolutely barred by time and as such, proposed amendment is impermissible.

8. This Court has also scrutinized the impugned order with care and caution but does not find any infirmity or illegality therein, rather, this Court is of the considered view that same is absolutely in consonance with settled proposition of law governing amendment of the pleadings. As such, no interference is legally justified in the impugned order.

9. Dismissed.

May 10, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No