

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.2727 of 2013
Date of Decision-10.01.2017**

Harinder Kaur and another ... Petitioners

Versus

Ajit Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anoop Sheoran, Advocate for the petitioners.

Mr. Rahul Sharma, Advocate for respondents No.3 & 4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 17.01.2013 passed by Civil Judge (Junior Division), Jalandhar vide which an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement was dismissed.

[2]. Plaintiffs-respondents filed a suit for permanent injunction restraining the defendants-petitioners from raising construction over the agriculture land situated in the revenue estate of village Nahal, District Jalandhar.

[3]. Plaintiffs claimed that they are co-sharers in the land shown in the plaint as per *jamabandi* for the year 2007-08. Defendant No.1-Pritam Singh sold 2 kanals, 10 marlas of land in khasra No.5//1 (7-12) in favour of Jarnail Singh. Mutation was also

sanctioned by revenue authorities. The factum of sale was reflected in the revenue record as per *jamabandi*. Defendant No.1 also sold 1/192 share out of khasra No.5//1 (7-12) in favour of Mohinder Ram. Mutation was also sanctioned in respect of said sale. The same was duly reflected in the revenue record. Pritam Singh was a co-sharer. His father Dalip Singh sold 1/912 share in khewat No.121 in favour of Mohinder Ram and mutation No.1386 was also sanctioned by the revenue authorities and the same was duly depicted in the revenue record. Pritam Singh sold the area measuring 2 kanals, 10 marlas out of land bearing khasra No.3//20, 21 and 5//1. Mutation No.1065 was sanctioned by the revenue authorities. Defendant No.1 was also a co-sharer in the land bearing khewat Nos.125 and 126. He had sold complete share in favour of Jarnail Singh and the name of Jarnail Singh had duly appeared in the revenue record. Aforesaid Pritam Singh sold land measuring 8 kanals, 3 marlas in favour of his wife Smt. Harinder Kaur. Mutation No.1454 was sanctioned in favour of Smt. Harinder Kaur wife of defendant No.1. The aforesaid area measuring 8 kanals, 3 marlas was situated in different khasra Nos. i.e.

- a. 2 kanal 16 marla being 56/707 share in land measuring 35 kanal 7 marla comprised in khasra Nos.8//24/1, 25, 9//22/1, 8//24/2, 5/15/2, 15/3, 15//15, 3//20 and 21.

b. 0 kanal 12 marla being 12/127 share of land measuring 7 kanal 7 marla comprised in khasra Nos.5//7/1/1 and 7/1/2.

c. 4 kanal 15 marla being 95/468 share of land measuring 23 kanal 8 marla comprised in khasra Nos. 15//5, 14//10 and 15//14.

[4]. Defendant No.1 had sold the land as per aforesaid details. Wife of defendant No.1 was arrayed as defendant No.2 in the suit. On apprehension of raising construction by defendant No.1, present suit came to be filed.

[5]. The suit was contested by defendant No.2.

[6]. Petitioner filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of written statement. In preliminary objection No.2 of the written statement, defendant No.2 had pleaded that the defendant had entered into an agreement to sell with Jaspal Singh son of Joginder Singh and Maninder Jit Singh son of Assa Singh in respect of 8 kanals 2 marlas of land and possession was handed over to the aforesaid vendees as per agreement dated 15.07.2011. In the application for amendment of written statement, it was pleaded that the possession was delivered to the prospective vendees namely Jaspal Singh and Maninder Jit Singh at the time of execution of agreement to sell dated 15.07.2011 and the date for registration of sale deed was fixed for 15.02.2012.

Since the prospective vendees failed to get the sale deed executed

on or before the date fixed, therefore, agreement to sell was cancelled and the defendant re-possessed the land measuring 10 kanals 18 marlas after cancelling the agreement to sell on 15.02.2012. Defendant No.2 pleaded that due to aforesaid act, necessity arose for amending the written statement.

[7]. The application was contested by the plaintiff on the ground that the filing of application was intended to delay the proceedings and the same was filed at a belated stage. Defendant had already taken opportunities to lead evidence. Evidence of the plaintiff was closed. The proposed amendment will change the nature of the suit. In the earlier written statement, defendant No.2 stated that the possession was delivered to Jaspal Singh and Maninder Jit Singh i.e. prospective vendees and now she has re-entered in the land in question. Nothing has been produced on record in respect of cancellation of agreement to sell. The admission made in the original written statement with regard to defendant No.2 not in possession is sought to be withdrawn under the plea of cancellation of agreement to sell and re-entry of defendant No.2 in the suit land.

[8]. Even otherwise, plaintiff has filed a suit for permanent injunction primarily against defendant No.1 by alleging that defendant No.1 along with his wife have threatened to raise construction over the suit land. The nature of prayer in the suit has nothing to do with the proposed amendment. The amendment in

question would be wholly inconsequential in a suit for permanent injunction in which restraint order was sought qua construction. Even if, the suit for permanent injunction is held to be on a questionable note, the amendment in question would not make any conclusive effect on the fate of the suit. The plea of defendant No.2 being out of possession or in possession would have no bearing on the progress of the suit in relation to prayer made therein.

[9]. In view of aforesaid, this Court finds that even though the amendment of written statement is to be liberally construed and the defendant can take inconsistent pleas in the written statement, but the amendment in question is not found to be *bona fide* in the present case. The nature of prayer in the suit has no connectivity or nexus with the proposed amendment. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

10.01.2017

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No