

C.R. No. 445 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 445 of 2016

DATE OF DECISION: 7.3.2017

Virender

.....Petitioner

Versus

Ramesh Rani and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Kulbhushan Sharma, Advocate
for respondent No.1.

Mr. OP Babla, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 15.12.2015 passed by Civil Judge (Junior Division), Faridabad, vide which, the application filed by petitioner-defendant No.1 under Order 6 Rule 17 CPC for amendment in the written statement has been dismissed.

Briefly, the facts of the case as made out in the present petition, are that petitioner-defendant No.1 was originally allotted Plot No. 1001 measuring two marlas situated in Sector 31, Urban Estate, Faridabad vide allotment letter dated 25.7.1983. He gave power of attorney in favour of one Om Parkash of village Tigaon, District Faridabad in the year 1987. The plot in dispute was not in the plan and, therefore, new General Power of Attorney was given in favour of Ramesh Rani-plaintiff-respondent No.1 in

the year 1992. The possession of the plot was not given by the HUDA authorities and thereafter a supplementary agreement was executed on 13.7.1995, wherein, it was mentioned that if the possession of the plot was not handed over or given to Ramesh Rani upto 13.7.1998 then she cannot claim any right, title or interest in the property and she would be entitled for refund of ₹20,000/-. The possession of the plot was not given by the authorities upto 13.7.1998 as mentioned in the supplementary agreement and petitioner-defendant No.1 is only entitled for refund of the aforesaid amount. Thereafter respondent No.1-plaintiff sold the plot to one Surjit Singh by executing Power of Attorney on 23.6.2005. In the meantime on 29.12.2000, HUDA authorities had intimated petitioner-defendant No.1 for allotment of alternative plot and as such HUDA authorities allotted alternative Plot No. 999, Sector 31, Faridabad in lieu of original plot No. 1001, Sector 31, Faridabad. The petitioner-defendant No.1 cancelled the GPA made in favour of respondent No.1-Plaintiff vide registered Deed of Cancellation on 3.7.2009. Being aggrieved by the cancellation of GPA, respondent No.1-plaintiff filed a suit for declaration with consequential relief of permanent and mandatory injunction.

During pendency of the suit, petitioner-defendant No.1 filed an application under order 6 Rule 17 CPC for amendment in the written statement, to which, reply was filed by respondent No.1-plaintiff. The application was dismissed by Civil Judge (Junior Division), Faridabad vide its order dated 15.12.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that amendment in the written statement is necessary for proper adjudication of the matter and

in case the amendment is not allowed, the petitioner would suffer irreparable loss as the plea cannot be taken at a later stage.

Learned counsel for respondent No.1 has opposed the submission made by learned counsel for the petitioner and contends that civil suit is at the stage of final arguments as the defendants evidence is going on and if the amendment is allowed a great prejudice would be caused to respondent No.1. Learned counsel further contends that all these facts were in the knowledge of petitioner-defendant No.1 and the application for amendment has been filed just to delay the matter. At the end, learned counsel submits that in case the amendment is allowed, it will reopen the case and cause unnecessary delay, which will also amount to abuse of process of law.

Heard the arguments advanced by learned counsel for the parties and have also gone through the other documents available on file.

Facts relating to filing of suit by respondent No.1-plaintiff for declaration to the effect that General Power of Attorney dated 14.7.1992, Deed of Cancellation of GPA dated 3.7.2009 in respect of originally allotted Plot No. 1001 has been admitted.

As per case of respondent No.1-plaintiff, Surjit Singh was having her Special Power of Attorney in respect of Plot No. 1001 only. Said plot was sold to respondent No.1-plaintiff by petitioner-defendant No.1 vide General Power of Attorney dated 14.7.1992. Thereafter said plot was sold to Surjit Singh vide Special Power of Attorney dated 23.6.2005. The petitioner-defendant No.1 wants to amend the written statement only on the ground that the agreement to sell was with regard to Plot No. 1001 and not of Plot No. 999, which was allotted later on.

The provisions of Order 6, Rule 17 CPC is procedural law. No doubt, the proviso to Order 6 Rule 17 CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before commencement of the trial. Aforesaid proviso is the provision of the procedural law. As per provisions of amendment of the proceedings, Courts are to be liberal in allowing the application of the amendment of the suit or the written statement, in case the same is not going to prejudice the rights of other party. Hon'ble the Apex Court in case of **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others** 2005 (4) RCR (Civil) 823 has laid down that all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice, procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. It was further laid down that the procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is an aid to justice. Similar ratio of law has also been laid down by Hon'ble the Apex Court in the case of **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others** 2015 (5) RCR (Civil) 562.

Hon'ble the Apex Court in case **Sushil Kumar Jain Vs. Manoj Kumar and another** 2009 (3) RCR (Civil) 899 has authoritatively laid down that in the case of an amendment of the written statement, the Courts should be more liberal in allowing the amendment of the pleadings as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a

defence or taking inconsistent pleas in the written statement can also be allowed. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the law regarding amendment of the written statement is quite liberal. Even a new or inconsistent ground of defence can be allowed by way of amendment in order to do the complete justice between the parties.

While exercising powers to allow the amendment, it is to be seen that by allowing the amendment, the litigation is minimized and also that the amendment which is necessary for the purpose of determining the real controversy between the parties should be allowed in case it does not change the basic nature of the suit.

In the present case, petitioner-defendant No.1 was originally allotted plot No. 1001 measuring 2 marlas situated in Sector 31, Faridabad vide allotment letter dated 25.7.1983. The petitioner gave power of attorney in favour of one Om Parkash but as the plot in dispute was not in the plan, therefore, new General Power of Attorney was given in favour of Ramesh Rani, respondent No.1-plaintiff. The possession of the plot was not given by the HUDA authorities and thereafter a supplementary agreement was executed on 13.7.1995. Subsequently the HUDA authorities allotted alternative plot No. 999 in Sector 31, Faridabad in lieu of plot No. 1001, Sector 31, Faridabad. Since the original plot was not allotted, therefore, respondent No.1-plaintiff was only entitled to ₹ 20,000/- as per supplementary agreement. The amendment in the written statement was necessary keeping in view the changed circumstances as there was no plot in existence, which was originally allotted to petitioner-defendant No.1. Due to allotment of alternative plot, the written statement has become necessary to be amended for just decision of the case but the same has not

been taken into consideration by the trial Court and the application moved by petitioner-defendant No.1 has been dismissed without recording any finding as to how the amendment was not necessary and how the interest of party opposite is going to be prejudiced.

Amendment of the plaint can be allowed even after dismissal of the appeal in case there is requirement to do justice by considering the facts and circumstances of the case. It has been held by Hon'ble the Apex Court in case of **Ramesh kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and others** 2012 (2) RCR (Civil) 739 that ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendment and it should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be in the interest of justice and not to cause any prejudice to the other party.

In view of the facts and circumstances as well as law position discussed above, I am of the view that impugned order deserves to be set aside. Accordingly the present petition is allowed and impugned order dated 15.12.2015 (Annexure P-5) passed by Civil Judge (Junior Division), Faridabad is set aside and the trial Court is directed to allow petitioner-defendant No.1 to amend his written statement.

7.3.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No