

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4589 of 2017
Date of Order: 31.08.2017

M/s Morgan Signature Towers Private Limited

...Petitioner

Versus

M.P.Nagar and another

...Respondent

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. Sandeep Jain, Advocate, and
Mr. Tarun Singla, Advocate,
for the petitioner.

Mr. Sanjev K. Panwar, Advocate,
for respondent no.1.

Mr. S.K.Mahajan, Advocate,
for respondent no.2-M.C.Faridabad.

ANIL KSHETARPAL, J.

Plaintiff is in revision petition against order dated 28.02.2017,
dismissing the application filed under Order VI Rule 17 of the Code of Civil
Procedure, seeking amendment of the plaint.

Plaintiff filed a suit before the Civil Court and the prayer made
in the suit is extracted as under:-

*“10. It is, therefore, prayed that a decree for permanent
injunction may kindly be granted in favour of the
plaintiff against the defendant No.1, restraining the
defendant No.1 his henchmen, representatives,
associates and others from encroaching, trespassing or
taking forcible possession and they may also be
restrained from raising any construction on the open*

plot of the plaintiff company marked by letters E F G H measuring 12' x 36' which forms part and parcel of the bigger plot No.1 and 2, Unit-III marked by letters A B C D as shown in the site plan attached with the plaint situated in NIT, Faridabad Industrial Area and defendant No.2 may also be restrained not to allow the defendant No.1 or any other person to sub-divide the same and to change the purpose from industrial to commercial, residential, shop, office etc. If the defendant No.1 succeeds to raise any construction over the property in dispute marked by letters E.F.G.H. or any other portion of the property marked by letters A.B.C.D during the pendency of the suit or proved to have been in possession over the suit property or any portion of the property marked by letters A B C D as shown in the site plan Annexure P-4 , then a decree for Mandatory Injunction/possession may kindly be passed in favour of plaintiff against the defendants with cost of the suit.”

During the pendency of the suit, plaintiff moved an application requesting the Court to permit amendment of the plaint as inadvertently, plaintiff has failed to assert that the plaintiff is in possession of the suit property. Certain other amendments were also prayed for. The amendments sought by the plaintiff are as under:-

“Hence plaintiff wished to add following para after para 4 in the plaint:-

“4(a) That plaintiff is in possession of the suit property on the date of institution of the suit”.

4. That plaintiff wishes to add following paras after para 5 in the plaint:-

“5(a) That vide agreement dated 21.12.1978, M/s Jhalani Tools (India) Limited mortgaged the Plot No.1 & 2, measuring 8.7 acres situated at New Industrial Area, Faridabd (which includes the suit property) to M/s Industrial Credit and Investment Corporation of India Limited (i.e. ICICI). The charge of ICICI over aforesaid Plot No.1 & 2 was even registered in the office of Registrar of Companies in the year 1979.

On 08.08.2000 Charge regarding equitable mortgage of all immovable assets of three units of M/s Jhalani Tools (India) Limited (including aforesaid plot No1 & 2) in favour of Consortium of Banks was registered in the office of Registrar of Companies.

Since the aforesaid mortgage of Plot No.1 & 2 to ICICI in the year 1978 till the Hon'ble High Court of Delhi permitted its sale to plaintiff vide orders 25.07.2006, Plot No.1 & 2 always remain mortgaged with one or the other

bank/financial institution and charge thereof has always been registered in the office of Registrar of Companies.

5(b) That as per Sections 531A, 536(2) and 537 (1) of Companies Act, 1956 sale of any property of a company without the leave of Court after commencement of winding up of that company is void. Section 441 of the Companies Act, 1956 provides that winding up of a company shall be deemed to commence at the time of presentation of the petition for winding up. Winding up of M/s Jhalani Tools (India) Limited commenced in the year 1998 when aforesaid Company Petition No.539 of 1998 was instituted before Hon'ble Delhi High Court.

5(c) That vide Orders dated 16.12.1998 passed in aforesaid Company Petition No.539 of 1998 Hon'ble High Court of Delhi restrained M/s Jhalani Tools (India) Limited from transferring, alienating or creating third party rights in its properties. Vide orders dated 18.03.2003 passed in aforesaid petition Hon'ble Delhi High Court ordered winding up of Jhalani Tools (India) Limited.

5(d) That as the suit property was mortgaged with bank(s)/financial institution(s) right from

the year 1978 and charge thereof was registered in the office of Registrar of Companies right from the year 1979; Winding up of M/s Jhalani Tools (India) Limited commenced in the year 1998; Hon'ble Delhi High Court had restrained transfer of properties of M/s Jhalani Tools (India) Limited, winding up of Jhalani Tools (India) Limited took place on 18.03.2003 suit property could have been sold only by the Official Liquidator and not either by the ex-management of Jhalani Tools (India) Limited either by themselves or through attorney. Sale deeds in respect of any part of Plot No.1 & 2, New Industrial Area, Faridabad, if executed by ex-management of Jhalani Tools (India) Limited either by themselves or through attorney since one year prior to the commencement of aforesaid Winding up proceedings are null and void-ab-initio.

5(e) That it is to be noted that upon passing of the order for sale of Plot No.1 and 2 (which includes the suit property) by the Hon'ble Delhi High Court to plaintiff, the aforesaid charge got enforced and upon purchase from official liquidator, plaintiff got the valid title to the Plot No.1 & 2 (including the suit property).

5(f) That as the Plot No.1 & 2, New Industrial Area, Faridabad (which includes the suit property) was allotted under Government Grants Act for industrial purpose and was already mortgaged as stated above, no revenue authority had jurisdiction either to allow bifurcation of Plot No.1 & 2 and/or to allow sale of any part of Plot No.1 & 2.

5(g) That plaintiff has purchased the Plot No.1 & 2 (including the suit property) free from all encumbrances under orders of Hon'ble Delhi High Court from a Statutory Authority (i.e., Official Liquidator). Plaintiff is a bonafide purchaser of the above mentioned entire Plot No.1 & 2 (including the suit property) for valuable consideration. Hence plaintiff is the lawful owner of the Plot No.1 & 2 (including the suit property).”

6. That plaintiff wishes to add following additional prayer in the para No.10 of the plaint:-

“ It is, therefore, prayed that a decree of declaration may kindly be passed, declaring plaintiff to be the owner in title of the suit property.”

Learned trial Court dismissed the application on the ground that the trial has started and the amendment sought for was in the

knowledge of the plaintiff and, therefore, the amendment cannot be allowed. Learned Court has further held that the proposed amendment would change the nature of the suit.

I have heard counsel for the parties at length and with their able assistance gone through the judgment as well as the record.

No doubt, as per the proviso to Order VI Rule 17 of the Code of Civil Procedure, the amendment of the pleadings cannot be permitted unless the party proves to the satisfaction of the Court that inspite of due diligence such facts could not be pleaded. Plaintiff had claimed a decree for permanent injunction, in the alternative, plaintiff had also prayed for mandatory injunction and possession.

It is fundamental that in a suit for injunction, plaintiff can claim relief only if it is able to prove that the plaintiff is in possession of the property on the date of institution of the suit. Such fact was inadvertently not so pleaded. In these circumstances, the plaintiff moved an application. Plaintiff was also praying to add certain facts which were necessary for adjudication of the dispute between the parties. Plaintiff had further made a prayer that the plaintiff be allowed to seek decree of declaration declaring the plaintiff to be owner of the suit property.

A reading of the plaint would show that the plaintiff in fact pleaded the necessary facts in the case. It was pleaded that defendant No.1 has no right, title or interest and there is an effort to encroach upon the certain portion of the land owned by the plaintiff. The petitioner had also prayed for decree of permanent injunction as also for mandatory injunction and possession. In such a suit, the prayer for declaration is inbuilt.

Amendment of the pleadings is to avoid multiplicity of the

litigation. Learned trial Court was totally wrong in assuming that such amendment would change the nature of the suit. The nature of the suit would remain the same. The property in dispute would also remain the same. The petitioner is only wanting to correct a mistake and incorporate certain facts which are necessary for adjudication. The Court should be liberal in granting such amendment.

In view of the discussion made herein above, the impugned order dated 28.02.2017, passed by the learned Civil Judge (Jr. Division), Faridabad, is set aside and the application for amendment of the plaint filed by the plaintiff is allowed.

The revision petition is disposed off accordingly.

August 31, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: YES/NO
Whether reportable	: YES/NO