

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CR No.5373 of 2014 (O&M)
Date of decision: 25.07.2017

Gurbaksh Singh and others

..... Petitioners

Versus

Buta Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S. Bal, Sr. Advocate with
Mr. Lovinder Kaur, Advocate
for the petitioners.

Mr. Ashish Gupta, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs have filed a present revision petition under Article 227 of the Constitution of India against the order dismissing the application seeking permission to amend the plaint. Plaintiffs have filed a suit on 25.09.2010. Copy of the plaint is Annexure P-1. Plaintiffs have challenged a decree passed by Civil Court on 30.06.1969 alleged to be an ex parte decree. Plaintiffs have pleaded in the plaint itself that the file of the case is not traceable in the record room. It was further pleaded that Buta Singh, the plaintiff in civil suit No.195 of 1968 had intentionally given old numbers when he challenged the sale deed dated 18.05.1956. Therefore, the suit was defective and hence, decree was also defective.

Issues in the present case were framed on 21.04.2012.

Thereafter, plaintiff examined two official witnesses.

Plaintiff filed an application seeking amendment of the plaint.

The amendment sought by the petitioner is extracted as under:-

“3-A That the perusal of the copy of the order/judgment dated 30.06.1969 and decree shows that the defendant No.1 filed that suit in the year 1968 deliberately without giving all the particulars of the land at that point of time in the plaint inspite of the fact that consolidation of holding did take place in the year 1961-1962 and gave the old numbers before the consolidation with ulterior motive. Since old numbers were not in existence at the time of filing of the suit, an exparte decree has been procured by suspension of th material facts.

a) Land measuring 48 kanals 7 marlas entered at rect. No.39, killa no.19/2, 12, 19/1, 18/2, 10, 23, rect. No.38, killa no.5, 6/1, rect. No.60, killa no.2/1min.

b) Land measuring 36 kanals 16 marlas entered at rect. No.38, killa no.16/2, 25/1, 14/2, 6/3, 24, 15/1, rect. No. killas no.14, 15/1,

c) Land measuring 68 kanals entered at rect. No.213, killas no.16/2, 14, 15, 17/1, 16/2, rect. no.114, killa no.11, 12, 10, 9, rect. No.212, killa no.21, rect. No.92, killa no.5,

It may also be mentioned here that the suit filed by Boota Singh defendant No.1 alone as shown in the copy of the order/judgment and decree of civil suit no.195 of 1968 without impleading all the legal heris of vendor Mehnga Singh and when the 2nd suit was filed after the death of Mehnga Singh which was pending before the court of Sh. Rajesh Garg, no detail of the vendees and their successors in interest has been given in the plaint. At the most if the decree is not set aside a fact disputed and denied then too may the defendant no.1 is only at the best can claim relief to the extent of 1/9th share of the total property and other defendant no.17 to 24 are not legally entitled to any relief in view of the exparte decree passed in civil suit no.195 of 1986.

3-B That the prayer clause also requires to be amended. So

before the words “costs of the suit and after the words” during the pendency of the suit following prayer may also be inserted.”

Learned trial Court after appreciating the facts available on the files, recorded following reasons for dismissal of the application:-

“In the present case, the issues have already been framed vide dated 21.4.2012 and some of the witnesses have already been examined. Now, it is to be seen whether matter sought to be incorporated by way of amendment in the present plaint could be brought on record inspite of due dilligence before commencement of trial or not. In this regard, a careful perusal of the plaint shows that the fact that the case file titled as Buta Singh Vs. Mehnga Singh etc. pertaining to CS No.195 of 1968 decided on 30.6.1969 is not traceable clearly finds mentioned in the plaint. The plaintiffs have specifically averred in their plaint that they have tried their level best, but the above said case file titled as Buta Singh Vs. Mehnga Singh etc. could not be traced out. The defendants have placed on record copy of application for setting aside exparte proceedings pertaining to CS No.484 of 2003 titled as Buta Singh Vs. Karnail Singh. A perusal of the copy of order for setting aside exparte proceedings shows that the defendants in that case which includes the present plaintiffs moved an application for setting aside exparte proceedings against them. However, the said application was dismissed by the then learned ACJ(SD), Kaithal, but the applicants-defendats were allowed to advance arguments. Thereafter, the applicants-defendants (plaintiff in the present case) allowed to advance argument, thereafter the present plaintiffs advanced the arguments. A perusal of judgment passed in CS No.484 of 2003 dated 29.02.2010 shows that the present applicants/plaintiffs have also raised arguments to the effect that the plaintiff (present defendant No.1) was required to refer the new numbers of land. This fact has been clearly

reflected in para No.21 of judgment passed in case titled Buta Singh Vs. Karnail Singh. From the above discussion, it is clear that fact that the case file titled as Buta Singh Vs. Didar Singh is missing and new numbers were not given by the Buta in the previous petition were well within the knowledge of the plaintiffs from the very beginning. Therefore, in the considered opinion of this court, the plaintiff have failed to exercise due diligence and these facts could have been raised before framing of issues. Therefore, since the plaintiffs have failed to exercise due diligence, no relief can be granted to the plaintiffs by way of present application. Resultantly, the application in hand stands dismissed. Now to come up on 1.8.2014 for evidence of plaintiffs subject to last opportunity.”

I have heard learned counsel for both the parties at length.

Learned counsel for the petitioner has submitted that there is no change in the nature of the suit except only the specific khasra numbers in possession of the plaintiffs have been specified. He has further submitted that amendment sought for shall not to prejudice the defendants and the amendment is explanatory only and therefore, the order passed by the trial Court is wrong.

Defendant Buta Singh had filed a suit in 1968. The suit filed by Buta Singh was decreed. It was declared decree. After the death of the father-Mehnga Singh, Buta Singh filed a suit for possession which is in the nature of execution. The aforesaid suit was contested by the plaintiffs in the present case as defendants. The suit filed by Buta Singh had been decreed on 29.12.2000. In that suit, plaintiff-petitioners have taken the same defence which has been taken in the plaint by the plaintiff. However, plaintiff failed to convince the Court.

A look at the amendments sought would prove that the fact on

which amendment is being sought has already been pleaded. The facts are available on the record. Issues were framed in 2012. Plaintiff have started evidence.

As per order 6 Rule 7 CPC, after the commencement of the trial Court, the amendment cannot be allowed unless Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter sought to be brought by way of amendment, before the commencement of the trial Court.

Learned trial Court has found that plaintiff could not prove the facts as pleaded in the application, were not in the knowledge of the plaintiff. As noticed above, the facts were in knowledge of the plaintiff, way back in 2010 when plaintiff had taken up this plea in defence while defending the suit filed by Buta Singh.

No doubt, the amendment would not change the nature of the suit, however, all amendments which do not change the suit cannot be allowed particularly after the commencement of the trial. It has been found by the Court that necessary pleadings are already in existence in the original plaint.

Learned counsel for the petitioners has further submitted that amendments sought shall not cause any prejudice to the defendants. I have considered the argument of learned counsel for the petitioners. Provisions of Order 6 Rule 17 are clear and specific. The proviso of Order 6 Rule 17 by an act No.22 of 2002 lays down that once the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of the trial, amendment cannot be allowed. Hence, the submission of learned counsel

for the petitioners cannot be accepted.

For the reasons recorded above, I do not find any ground to interfere with the order passed by the trial Court dated 14.07.2014.

Revision petition is dismissed.

25.07.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No