

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5930 of 2017
Date of Decision: 4.9.2017

Amrik Singh

---Petitioner

versus

Paramjit Kaur

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Himanshu Puri, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 7.8.2017 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Kapurthala whereby application under order 6 Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure (in short “the Code”) filed by the respondent-plaintiff has been allowed.

The sole submission made by counsel for the petitioner is that by way of proposed amendment, the respondent-plaintiff wants to challenge sale deed dated 29.12.2011 bearing Wasika No. 4135 executed by defendant No. 1 in favour of defendant Nos. 2 and 3 (sought to be added as party) being illegal, void, invalid, without consideration, not for legal necessity or benefit of estate etc. It has further been argued that after amendment, para 2 of the plaint would read as under:-

“That the plaintiff is owner in possession to the extent of $\frac{1}{2}$ share out of plot measuring 7 marlas being 7/1025 share

comprised in Khewat/Khatauni No. 340/459, Khasra No. 7//1/8-0, 2/1/5-8, 9/2/5-8, 10/8-0, 11/2/7-16, 12/1/2/5-4, 19/2/3/2-3, 20//3/5-8, 21/1/2/0-19, 8//25/3/1/1/2-19 situated at Mansoorwal Dona, Tehsil & District Kapurthala and it has also come to the knowledge of the plaintiff that defendant No. 1 in connivance with defendants No. 2 and 3 have sold plot No. 154 situated at Urban Estate Kapurthala to defendants No. 2 and 3 wrongly, illegally, without legal necessity and not for the benefit of the estate vide sale deed dated 29.12.2011 wasika No. 4135. The said sale deed is out come of fraud, misrepresentation, which is illegal, invalid, void, without consideration and not for legal necessity or for the benefit of the estate and is ineffective and inoperative upon the rights of the plaintiff and confer no title, upon the defendants No. 2 and 3 as the land in dispute is joint Hindu Family Property. The mutation, if any is sanctioned on the basis of above said sale deed is wrong, invalid, void, not binding upon the rights of the plaintiff and the same is liable to be cancelled.”

According to counsel, in para 2 sought to be introduced by way of amendment, there is no reference as to when the respondent/plaintiff came to know about the sale deed dated 29.12.2011, therefore, claim of the respondent/plaintiff to challenge the said sale deed in the year 2017 is clearly barred by limitation, hence, allowing the proposed amendment would introduce a time barred claim causing a serious prejudice to the petitioner for which cost is not a remedy.

I have heard counsel for the petitioner, perused the paper book particularly the application for amendment, reply thereto and the order impugned.

In para 2 of the application (Annexure P-5), it has been categorically averred that it has come to knowledge of the plaintiff from the written statement filed by the defendant that plot No. 154 situated at Urban

Estate, Kapurthala has been sold and on enquiry, it has come to knowledge of the plaintiff that plot No. 154 situated at Urban Estate, Kapurthala has been sold to Mr. Shiv Raj Garg son of Neer Chand and Manju Bala wife of Shiv Raj Garg, residents of H.No. 10, Aman Nagar, Near Bhatia Hospital, Kapurthala vide sale deed dated 29.12.2011 Wasika No. 4135 and the said sale deed is the outcome of fraud, misrepresentation, which is void, illegal, invalid and not for legal necessity or for the benefit of the estate. On a query by the Court, counsel for the petitioner has fairly informed that the written statement was filed by the petitioner on 7.2.2016 and the instant application for amendment was filed on 8.6.2017. As the respondent/plaintiff allegedly gained knowledge of the sale deed from the written statement filed in February 2016, it is difficult to accept contention of the petitioner that in case the proposed amendment is allowed, it would tantamount to introducing a time barred claim causing prejudice to the petitioner for which he cannot be compensated with costs. The mere fact that in para 2 sought to be added by way of amendment, the aforesaid fact has not been specifically stated, is not sufficient to find error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

4.9.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No