

C.R. No. 614 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 614 of 2017

DATE OF DECISION:07.03.2017

Sham Kumar Kohli

.....Petitioner

Versus

Ashok Tandon and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.K. Passi, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned order dated 19.9.2016 passed by Civil Judge (Junior Division), Ludhiana, whereby, an application moved by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

Briefly, the facts of the case as made out in the petition are that the petitioner-plaintiff filed a civil suit for declaration to the effect that he is owner in possession of the property bearing No. 86-87 D measuring 150 square yards situated at Kitchlu Nagar, Ludhiana and for permanent injunction restraining the respondents-defendants themselves through their agents, attorneys from interfering into his peaceful possession. Written

statement to the suit was filed by the respondents. Thereafter the petitioner-plaintiff filed an application under Order 6 Rule 17 CPC for amendment of the plaint on the ground that in the headnote as well as in the prayer clause of the plaint before the words “86-87 D”, the word “85-D” be allowed to be added and before the word “owner”, the word “real” be allowed to be added and after the word “Ludhiana”, the following lines be allowed to be added:-

“....and the defendants are only the ostensible owner of the property bearing No. 86-87 D above said.

And after the words “except in due course of law”, the following lines be allowed to be added:-

“.....and further restraining the defendants from alienating and transferring the suit property to anybody else in any manner whatsoever.”

The petitioner-plaintiff also wanted to add paras 2 (a) and 3 (a) and certain additions at the end of para No. 6 of the plaint as mentioned in the impugned order.

Aforesaid application filed by the petitioner-plaintiff was dismissed by the trial Court vide order dated 19.9.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the application has wrongly been dismissed only on the ground that it was filed at the belated state, whereas, the amendment sought will result into elucidating the correct projections of the building. Learned counsel further contends that no prejudice is going to be caused to the other party in case the application for amendment of the plaint is allowed.

Heard the arguments advanced by learned counsel for the

petitioner and have also perused the impugned order and other documents available on the file.

Filing of suit, written statement to the suit and application under Order 6 Rule 17 CPC are not disputed. Initially, the petitioner-plaintiff filed a suit for declaration to the effect that he is owner in possession of the property bearing No. 86-87 D measuring 150 square yards situated at Kitchlu Nagar, Ludhiana and for permanent injunction restraining the respondents-defendants themselves through their agents, attorneys from interfering into his peaceful possession. Written statement to the suit was also filed. Subsequently an application was moved by the petitioner-plaintiff under Order 6 Rule 17 CPC for amendment of the plaint on the ground that in the headnote as well as in the prayer clause of the plaint before the words “86-87 D”, the word “85-D” be allowed to be added and before the word “owner”, the word “real” be allowed to be added and after the word “Ludhiana”, the following lines be allowed to be added:-

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And after the words “except in due course of law”, the following lines be allowed to be added:-

“.....and further restraining the defendants from alienating and transferring the suit property to anybody else in any manner whatsoever.”

The petitioner-plaintiff also wanted to add paras 2 (a) and 3 (a) and certain additions at the end of para No. 6 of the plaint as mentioned in the impugned order.

The said application was moved for addition of number of plot

by mentioning that the petitioner is owner of said plot also. The said application was contested by the respondents-defendants by way of filing reply, wherein, it was averred that along with suit the petitioner-plaintiff has filed an application under Order 39 Rules 1 and 2 CPC and ultimately the application was dismissed by the trial Court. Even the appeal filed against that order was also dismissed by the court of Additional District Judge, Ludhiana. The petitioner-plaintiff has moved the application for amendment of the plaint by adding new pleas, which will not only change the nature of suit but relief sought in the suit will also be changed. It is well settled law that no amendment can be allowed which changes the nature of the suit or the relief sought in the suit. As per case of the petitioner-plaintiff, he wanted to add one more number of the property bearing 85-D, which was not part of the suit property earlier. The amendment has been sought on the ground that he is real owner of the said property and the respondents are only ostensible owner of that property. A specific ground was raised in the reply of the application filed by the respondents-defendants that the petitioner-plaintiff is claiming ownership over the suit property bearing Plot No. 85D, 86D and 87D on the basis of adverse possession. It is also not disputed that suit was instituted on 20.1.2007 and the application for amendment was made after a long delay that too after framing of the issues. It has also not been mentioned in the application as to whether the petitioner was not aware about the number of the plot which he wants to add at the time of filing of the suit. No reasonable explanation for addition of number of the plot in the suit by way of amendment of the plaint has been mentioned in the application as well as in the arguments raised by learned counsel for the petitioner.

By way of amendment, the petitioner wants to add paras 2 (a) and 3 (g) and certain additions at the end of para No. 6 of the plaint, which itself is mentioned in the impugned order. If the amendment is allowed, it will not only change the nature of the suit but will also change the relief sought for in the suit, which may cause prejudice to the other party.

There is no force in the arguments advanced by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

March 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes