

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7203 of 2017 (O&M)

Date of Decision: 30.10.2017

Balwinder Kaur

..Petitioner

Vs.

Banta Singh and others

..Respondents

CORAM: HON'BLE MR.JUSTICE B.S.WALIA

Present: Mr.Karanjit Singh, Advocate for the petitioner.

B.S.Walia, J.(Oral)

1. Challenge is to order Annexure P-2 dated 16.9.2017 whereby the learned Additional Civil Judge (Sr.Divn.) Sultanpur Lodi dismissed the application of the plaintiff-petitioner under Order 6 Rule 17 of the CPC read with Order 1 Rule 10 of the CPC and Section 151 CPC for amendment of plaint and for addition of necessary parties.

2. Brief facts giving rise to the filing of the instant revision petition are that the plaintiff-petitioner filed a suit for declaration contending that he was joint owner of ancestral property of Joint Hindu family as per details given in the head note of the plaint and had learnt from uncertain sources that defendant-respondent No.1 had sold some properties but since details of the same were not available, he made a mention in paragraph No.3 of the plaint regarding sale having taken place but since neither particulars nor copy of sale deed were available with him, therefore, he could neither challenge the sale deed nor could add the purchasers as

defendants in the suit. However, after a long and thorough search, plaintiff-petitioner was able to ascertain the particulars therefore, sought to make requisite amendments to add the vendees as party in the suit as defendant Nos.2 and 3 since defendant No.1/respondent No.1 had executed an illegal and invalid sale deed/Vasika No.1740 dated 24.12.2013 qua land in Khasra No.24//11/3/1(2-16), 24//12/1 (4-0), 24//21/1 (1-18), 25//25/2 (3-14), 24//11/1 (1-16), 24//21/3/1 (4-16), 25//13 (8-0), 25//14/1(5-0), 25//14/2 (3-0), 25//15 (8-0) Kitta 10 total land 42K-10M out of which 136/850 share i.e. 6 kanals 16 marlas and mutation No.1610 was sanctioned in favour of proposed defendant No.2 and defendant No.3. Amendment was also sought to correct an inadvertent typing mistake/omission in paragraph No.2 where the word 'father' was typed instead of 'forefathers' so as to replace the word 'father' with the word 'forefathers' etc. In paragraph No.3 line 3, after the word "value" the words "vide sale deed dated 24.12.2013 in favour of defendants Nos.2 and 3 in respect of Khasra numbers as mentioned in the application and mutation No.1610 as was sanctioned in favour of defendants No.2 and 3 on the basis of abovesaid sale deed, were sought to be mentioned.

3. It needs mentioning here that the suit was filed by the petitioner-plaintiff on 17.11.2014 and was fixed for rebuttal evidence and arguments. Objection was taken by the respondent-defendants that the parties proposed to be added as defendants were to the knowledge of the plaintiff before the filing of the suit and it was well settled that a party seeking amendment of the plaint after the commencement of the trial was bound to plead and prove that the amendment sought could not be made

before the commencement of the trial despite due diligence. It was also contended that the proposed amendment and addition would change the nature of the suit and would result in a *denovo* trial. Learned trial court took into account that even on merit, the plaintiff-petitioner had failed to prove suit property to be ancestral co-parcenary property despite adducing evidence qua the issues framed for proving the suit property to be ancestral property.

4. Admittedly, on 15.3.2017, defendant No.1 closed evidence and case was fixed for rebuttal evidence. Plaintiff-petitioner after availing five opportunities for rebuttal and arguments, filed an application under Order 6 Rule 17 read with Order 1 Rule 10 and Section 151 of the CPC on 17.4.2017 without placing on record certified copy of sale deed pleaded by her in her application nor she averred in the application that despite best efforts she did not have access to the sale deed mentioned in the application. Plaintiff-petitioner herself relied upon copy of jamabandi for the year 2007-08 which was issued on 16.9.2014 which reveals that entry of mutation No.1610 dated 24.2.2014 was struck down by the concerned revenue official regarding sale of land by Banta Singh i.e. defendant No.1 in favour of Jaswant Kaur and Salwinder Kaur from which it is apparent that it was very well within the knowledge of the plaintiff-petitioner at the time of filing of the suit that defendant No.1 had sold the suit land. As regards the plea that the defendant had not disclosed about the sale deed, the learned trial Court observed that the said plea was without any basis since no application had been moved by the plaintiff-petitioner for production of documents or admission or denial or interrogatories relating to the sale deed

in question. In the aforementioned background, the learned trial court dismissed the application vide order dated 16.9.2017 (Annexure P-2).

5. I have considered the submissions made by learned counsel. Admittedly, suit was filed for declaration on 17.11.2014 that plaintiff-petitioner was joint owner of ancestral properties of Joint Hindu Family as per the details given in the head note of the plaint and that she had come to know from uncertain sources that defendant/respondent No.1 had sold some properties but no detail in respect thereto were mentioned in the plaint except for mentioning the factum of sale in paragraph No.3 of the plaint. Neither the sale deed was challenged nor were the purchasers added as defendants in the suit. The plaintiff-petitioner also did not move any application for production of documents under Order 11 Rule 12 CPC or for admission or denial or interrogatories relating to the sale deeds in question. Defendant No.1 closed evidence on 15.3.2017 and the case was fixed for rebuttal evidence. Thereafter, the plaintiff-petitioner after availing five opportunities for rebuttal and arguments, moved the application under Order 6 Rule 17 as also under Order 1 Rule 10 CPC on 17.4.2017 without placing on record certified copy of the sale deed pleaded by her in the application nor was any averment made in the application that despite best efforts, she could not have access to the sale deed mentioned in the application. Besides the plaintiff-petitioner relied upon copy of jamabandi for the year 2007-08 which was issued on 16.9.2014 whereas the suit was filed on 17.11.2014. Perusal of the jamabandi reveals that entry of mutation No.1610 dated 24.2.2014 was struck down by the concerned revenue official regarding sale of land by Banta Singh i.e. defendant No.1 in favour of Jaswant Kaur and

Salwinder Kaur i.e. proposed defendants No.2 and 3. Thus, it is apparent that the same was to the knowledge of the plaintiff-petitioner at the time of filing the suit that defendant No.1 had sold the suit land to proposed defendants No.2 and 3. The plaintiff-petitioner also failed to prove the nature of the suit property as ancestral co-parcenary property despite adducing evidence qua the issues framed for proving the nature of suit property as ancestral property. Besides the *sine qua non* for an application for amendment of pleadings to be allowed after the commencement of trial is that the party seeking amendment could not have raised the matter before the commencement of the trial despite due diligence. Afore-mentioned aspect of the matter is completely missing in the instant case. Accordingly, finding no merit in the revision petition, the same is dismissed. No order as to costs.

30.10.2017

Meenu

**(B.S.Walia)
Judge**

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