

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

144

CR No.7283 of 2017
Date of decision: 27.10.2017

Amrish Kumar

..... Petitioner

Versus

Dinesh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vishal Aggarwal, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.3 is in revision petition against the order dismissing the application for amendment of the written statement. Learned trial Court while dismissing the application has observed as under:-

“I have heard the Ld. Counsel for the parties and have gone through the judicial file very carefully. It is observed that facts to be brought on file by way of amendment by defendant No.3 were already in the knowledge of defendant No.3. Moreover, it is necessary to mention the extent of share of each of the co-owners. Hence, if the defendant has not mentioned the share of the parties, it does not matter. Moreover, trial of the case has already begun and the amendment sought by the defendant No.3 is not necessary for just decision of the case rather it will delay the matter. Hence, there is no merit in the application moved by defendant No.3. Thus, the same is dismissed. Now to come up on 16.10.2017 for PW's”.

Plaintiff had filed a suit in the year 2012 with the following

prayers:-

“Suit for declaration to the effect that the sale deeds no.3423 & 3424 dt. 13-08-2001 respectively executed by Ashok Kumar & Rajesh Kumar defendants No.1 & 2 in favour defendants No.6 & 7 Smt. Raj Rani w/o Sh. Vijay Gupta & Sham Lal s/o Sh. Hari Krishan measuring 15 x 20 each of Property No.55, Mohalla No.10, Sadar Bazar, Jalandhar Cantt. is a result of fraud, collusion and has been made just to defeat the rights of the plaintiff and the same does not affect the rights of the plaintiff in any manner in the above referred property shown red in the site plan attached and bounded as under:-

East : Street

West : House of others

North : Street

South : House of others

And

for declaration to the effect that the Family Settlement/Memo of Partition dt. 31.03.1961 does not effect the rights of the plaintiff in any manner as the same has been made five months approx. prior to the birth of the plaintiff;

And

for declaration to the effect that the plaintiff is a co-owner to the extent of 1/3rd share in the suit properties shown red in the site plan attached being coparcener, details of whcih are as under:-

a. Property No.55, Mohalla No.10, Sadar Bazar, Jalandhar Cantt.

East : Street

West : House of others

North : Street

South : House of others

b. Shop No.32, Mohalla No.10, Sadar Bazar, Jalandhar Cantt.

East : Street

West : Shop No.31

North : House No.33

South : Road

c. *House No.33, Mohalla No.10, Sadar Bazar, Jalandhar Cantt.*

East : Street

West : Shop No.31

North : House No.34

South : Shop No.32

d. *House No.34, now Khola, Mohalla No.10, Sadar Bazar, Jalandhar Cantt.*

East : Street

West : House No.39/10

North : House No.35

South : House No.33

e. *House No.46, Mohalla No.10, Sadar Bazar, Jalandhar Cantt.*

East : Street

West : Blind Street

North : House No.47

South : House No.45

And

for separate possession by way of partition of all the above referred properties shown above from 'a' to 'e';

And

for permanent injunction restraining the defendants from alienating, mortgaging and transferring the suit property to anybody without getting the same partitioned;”

Defendant No.3 filed his written statement on 13.03.2013.

After framing of the issues, trial started. At the last stage, plaintiff moved an application praying that he wants to specify the share of defendant No.3 and one Ms. Somawati had adopted defendant No.3 and executed a duly registered Will dated 22.08.1987 in his favour. The aforesaid application was dismissed for the reasons extracted above.

It is not in dispute that one of the relief prayed for in the suit is for the partition of the property. The Court would at the time of

adjudication of the claims determine what are the respective shares of each of the defendant if the Court ultimately agrees with the plaintiff. In the considered opinion of this Court, such specification of share which is only an elaboration of the plea taken in the written statement is not required. As per Order 6 Rule 2 CPC, the pleadings have to be concise.

With regard to second amendment which has been sought, the Court has noticed that this fact was in the knowledge of defendant No.3, however, defendant failed to establish that in spite of due diligence, this plea could not be raised before the commencement of the trial. Even before this Court, learned counsel for the petitioner could not justify as to why this defence could not be taken by the defendant when originally the written statement was filed in 2013.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the order passed by the Court, however, as and when the Court adjudicated upon the rights of the parties and the respective shares to be allotted to them, the same shall not be rejected on the ground that there is no pleading to the effect.

Revision petition is dismissed.

27.10.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No