

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7392 of 2017 (O&M)
Date of Decision: 27.10.2017

Ajit Singh

... Petitioner

Versus

Jaswinder Singh Nagra and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Rana, Advocate,
for the petitioner.

ANIL KSHETARPAL, J. (ORAL).

The plaintiff/petitioner is in revision petition against the order dismissing the application for amendment of the plaint.

Learned trial Court while dismissing the application with costs, has recorded as under: –

“Perusal of record revealed that the present suit has been filed by the plaintiff seeking relief of declaration with respect to Sale deeds dated 18.05.2012 and 01.06.2012 alleged to be executed by defendant no.1 through defendant No.2 in favour of defendant nos.3 to 5 on the basis of power of attorney dated 24.05.2011. It is also to be considered that defendant No.2 and 3 in their written have categorically denied the execution of the aforesaid sale deeds through power of attorney dated 24.05.2011 and averred that those sale deeds have been executed on the basis of power of attorney dated 28.03.2012.

Plaintiff preferred not to file any replication to the said averments taken by defendant Nos.2 and 3 in their written statement. Undoubtedly, theory of adverse traverse do not apply to the plaintiff. Nevertheless, it is to be appreciated that plaintiff became aware of the factum of stand taken by defendant nos.2 and 3 towards the execution of sale deeds vide power of attorney dated 28.03.2012. However, plaintiff preferred not to amend their pleadings thereafter rather led his evidence availing opportunities for more than one year and thereafter, evidence of the plaintiff was closed by order on 20.03.2017. Plaintiff despite being fully aware about the stand of the defendant wait for the defendant to conclude their evidence which they did on 03.08.2017 and thereafter availing two opportunities to lead rebuttal evidence, moved the application in hand seeking amendment of the pleadings averring that factum of execution of sale deeds on the basis of power of attorney dated 28.03.2012 as averred by defendant nos.2 and 3 came to their knowledge while going through the documents and it was due to inadvertence that the said fact could not be pleaded by him earlier. The explanation submitted by the plaintiff is not justifiable as it is the plaintiff who preferred to keep mum for years together and then move the application in hand in the present case which falls within the category of five years old Samadhan cases at the fag end,

which otherwise will lead to a denovo trial. In the light of these facts and circumstances, the application in hand is disallowed with costs of Rs.500/- to be deposited in DLSA.

However, it is made clear that the opinion expressed hereinabove, for disposal of the present application shall have no effect on the merits of the present case. To come up on 10.10.2017 for rebuttal evidence, if any, for addressing arguments.”

This order is under challenge before this Court. The plaintiff/petitioner had filed a suit challenging the sale deeds executed by his son as an attorney. It was pleaded in the plaint that defendant No.1 had executed the sale deeds on the basis of General Power of Attorney dated 24.05.2011. When the case was at the stage of arguments, an application was filed that in fact the sale deeds are on the basis of General Power of Attorney dated 28.03.2012 and, therefore, the plaintiff should be permitted to challenge the aforesaid attorney.

It is a clear case of abusing the process of the Court. The suit was filed in 2012. Learned trial Court has recorded more than 5 reasons that the plaintiff is misusing the process of the Court.

Learned counsel for the petitioner has submitted that the law to allow amendment of the pleadings is quite liberal. He has cited certain judgements of the Hon'ble Supreme Court.

I have considered the submission of the learned counsel.

As per the proviso to Order 6 Rule 17 CPC, the amendment of

the pleadings cannot be permitted after the commencement of the trial unless party establishes before the Court that in spite of due diligence the proposed amendment could not be brought on the file. In the present case, the plaintiff filed the suit challenging the sale deed alleging that defendant No.1 has misused the attorney dated 24.05.2011. The plaintiff even did not bother to look and carefully read the sale deeds to know whether the same have been executed by General Power of Attorney dated 24.05.2011 or 28.03.2012. Once the trial is over and the plaintiff has found that the entire basis of the suit is false, the application for amendment has been moved.

For the aforesaid reasons, this Court does not find any good ground to interfere with the order passed by the learned trial Court.

The revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

27.10.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No