

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7521 of 2017

Date of Decision:02.11.2017

Sukhbir Singh

.....Petitioner

v/s

Balbir Singh and others

.....Respondents

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

Present: Mr.Hitesh Ghai, Advocate for the petitioner.

B.S.Walia J. (ORAL)

1. Challenge is to order dated 06.09.2017 (Annexure P-5), whereby the application of the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short "CPC") was dismissed.
2. Learned counsel states that the suit was filed on 09.05.2013 for a declaration that the plaintiff-petitioner was owner in possession of land measuring 13 kanals 02 marlas on the basis of Will executed by his grandfather in his favour in the year 1992.
3. Learned counsel contended that a suit had earlier been filed by the plaintiff-petitioner's uncles prior to the institution of the suit by the plaintiff-petitioner that the Will executed by the plaintiff-petitioner's grandfather was forged/fabricated and that succession was to go as per natural inheritance. Plaintiff-petitioner who was then a minor was impleaded as a defendant in the said suit through his natural guardian i.e. Mother. On the basis of contest, the suit filed by his uncles was decreed vide judgment and

decree dated 06.12.2005. Appeal filed by the plaintiff-petitioner's natural guardian against the said decision, met with no success and the appeal was dismissed vide order dated 24.09.2008. The matter was not challenged, further resulting in the said decision, attaining finality.

4. Learned counsel contends that the plaintiff-petitioner had filed an application for interim orders in the civil suit filed by him praying for restraining the defendant-respondent from dispossessing him from the land in question. However, the said application was dismissed by the learned trial Court vide order dated 13.11.2014. Appeal against the rejection of the application for grant of interim orders by the learned trial Court was dismissed by the learned Appellate Court vide order dated 16.10.2016 primarily on the ground that the plaintiff-petitioner had not challenged the judgment and decree dated 06.12.2005 passed in Civil Suit No.159 of 16.8.1999 i.e. the suit filed by his uncles in which it was held that succession to the petitioner's grandfather would be by way of natural succession.

5. Learned counsel contended that it was thereafter that the petitioner moved an application for amendment to incorporate a challenge to the judgment and decree dated 06.12.2005 passed in Civil Suit No.159 of 16.8.1999 decided by Shri K.K. Goel, Civil Judge (Jr. Divn.), Khanna as being null, void, ineffective and not binding upon his rights. Learned counsel further contends that the learned trial Court after taking into account that Civil Suit No.159 of 16.8.1999 had been decided on merits in which the plaintiff-petitioner was defendant No.6, as also the fact that the appeal preferred by the plaintiff-petitioner against judgment and decree

dated 06.12.2005, had been dismissed, came to conclusion that in case the plaintiff-petitioner was aggrieved with judgment of the learned trial Court dated 06.12.2005 as well as the judgment of the learned Lower Appellate Court dated 24.09.2008, he had the remedy to challenge the same in an appropriate forum, but he could not be permitted to amend the plaint for challenging judgment dated 06.12.2005 passed in Civil Suit No.159 of 16.8.1999 especially when the plaintiff-petitioner was one of the defendants in the said suit and the appeal preferred by him against the said judgment dated 06.12.2005 had been also dismissed. In the aforementioned background, the learned trial Court dismissed the application for amendment.

6. I have considered the submissions of learned counsel and find that the orders passed by the learned trial Court rejecting the prayer for amendment does not suffer from any infirmity.

7. Plaintiff-petitioner was aware of the judgment and decree of the trial Court in Civil Suit No.159 of 16.8.1999, as he had contested the same not only before the trial Court but also by way of appeal which was dismissed on 24.09.2008. Civil Suit out of which the instant revision petition arises was admittedly filed on 09.05.2013. Issues were framed on 13.11.2014 i.e. prior to the moving of application for amendment on 05.07.2017. Although, appropriate remedy in the facts and circumstances of the case qua grievance in respect of judgment and decree of the Appellate Court dated 24.09.2008 in Civil Suit No.159 of 16.08.1999 was to challenge the same before the appropriate forum, the amendment to incorporate a challenge to the judgment and decree dated 06.12.2005 in

Civil Suit No.159 of 16.08.1999 as had been upheld by the first Appellate Court on 24.09.2008 was not maintainable especially since it would take away from the defendant-respondents a legal right accrued in their favour in terms of the judgment and decree dated 06.12.2005 in Civil Suit No.159 of 16.08.1999 as was upheld by the learned lower Appellate Court vide judgment and decree dated 24.09.2008, besides the amendment even if otherwise permissible would have been barred by limitation since the judgment and decree of the learned First Appellate Court was of 24.09.2008 and the plaintiff-petitioner who had attained majority in May, 2010 had filed the civil suit on 09.05.2013 and had sought amendment on 05.07.2017. Even if the amendment had been permissible, the plaintiff-petitioner would have had to show that in view of the trial having commenced on 13.11.2014, he had not been able to move the application for amendment prior to commencement of the trial due to circumstances beyond his control and despite exercise of due diligence. Plaintiff-petitioner has also not been able to show that he could not move the application earlier despite exercise of due diligence.

8. In view of the position as noted above, I find no reason to interfere with the order passed by the learned trial Court.

9. Accordingly, finding no merit in the Revision Petition, the same is dismissed.

(B.S.WALIA)
JUDGE

02.11.2017

Anjal

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No