

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No.8198 of 2015 (O&M)
Date of decision: 16.12.2017**

Ballam Singh and others

.....Petitioners

Versus

Jagga Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vijay Lath, Advocate,
for the petitioners.

Mr. Onkar Singh, Advocate,
for the respondent.

Ritu Bahri, J.

Challenge in this petition is to the order dated 19.10.2015 passed by the Additional Civil Judge (Senior Division), Anandpur Sahib, whereby application filed by defendants-petitioners under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment of the written statement, has been dismissed.

Plaintiffs-Jagga Singh etc. (respondent Nos.1 to 4 herein) filed a suit for possession by way of redemption of mortgage of the land measuring 4 Kanals 2 Marlas, comprised in Khasra No.649, situated at village Sawara, Tehsil Anandpur Sahib, District Ropar, on payment of Rs.150/- being mortgage amount or any other amount and directing the defendants (petitioners herein) to execute necessary receipt in their favour and thereafter, give possession of the suit property to the plaintiffs.

Upon notice, defendant Nos.1 to 8-petitioners filed written statement, wherein it has been stated that Amar Singh son of Gurmukh Singh had mortgaged the suit property to Ralla, who later on sold the mortgaged rights of the suit land to Bishan Singh son of Mann Singh and put him in possession over the same. This transaction was oral. However, subsequently, defendant Nos. 1 to 8, came to know that the aforesaid mortgagee rights were sold vide registered mortgage deed dated 08.08.1980. Defendants came to know about this fact from the papers of their father-Bishan Singh (after filing of the written statement). Thereafter, they filed an application for amendment of the written statement by adding para No.4-A to the following effect:-

“4-A. That the suit is bad for non joinder and mis-joinder of necessary parties and for that reason, the suit is liable to be dismissed on this score only.”

Similarly, in Para No.4 of written statement (under the head 'Preliminary Objections') after the words “in the similar manner Amar Singh mortgaged the suit property to Ralla”, petitioner-defendants wanted to add following words:-

“Ralla son of Gokal had sold the mortgage right of 4 Kanals 2 Marla of land being $\frac{1}{2}$ share to the defendants through their father vide registered Mortgaged Deed dated 08.08.1980 and the possession was delivered to the defendants at the time of execution of above said mortgaged deed. The copy of the mortgaged deed dated 08.08.1980 is attached herewith.”

Plaintiffs-Jagga Singh etc. were opposing the aforesaid amendment on the ground that as per photocopy of the registered mortgage

applicants-defendants (petitioners) themselves and not in favour of their father Bishan Singh. Since the applicant-defendants were in the knowledge of the mortgage deed from the very beginning and plaintiffs have already led evidence, application Under Order 6 Rule 17 CPC for amendment of the written statement at the stage of evidence of the defendants, should be dismissed, as the case was already five years old. Plaintiffs are not denying the status of defendants as mortgagee over the suit property. The trial Court has dismissed the application on the ground that the trial was five years old and the plaintiffs had not denied that the defendants were not mortgagee over the suit property. Since the plaintiffs had purchased the property from Amar Singh (original owner), it would not make a difference. Moreover, Ralla, who had sold the mortgagee rights to applicants-petitioners, has not filed any suit to redeem possession of the suit property. The suit has been filed by vendors of the original owner-Amar Singh. Hence, there was no need for allowing the amendment.

Learned counsel for the petitioners (defendants) has argued that the law for allowing amendment in the written statement is very liberal. He has relied upon the judgments passed by Hon'ble the Supreme Court in Usha Balashaheb Swami & others Vs. Kiran Appaso Swami & others, 2007 (2) RCR (Civil) 830 and Baldev Singh & others Vs. Manohar Singh & another, 2006 (3) RCR (Civil) 844.

Learned counsel for the respondents has placed on record affidavit of Jagga Singh-respondent No.1 dated 08.08.2017, wherein it has been stated that the land in dispute is an agricultural irrigated land and yields two crops every year i.e. *Sowni* (Paddy/Dhan) and *Harri* (Wheat/Kanak). Yearly rent of the similar land in its neighbourhood, if leased out, runs between

respondents has referred to the registered mortgage deed dated 08.08.1980 (Annexure P-3), from where it is clear that the land in dispute had been mortgaged with possession in favour of defendant Nos.1 to 8 (petitioners) son of Bishan Singh. The mortgage was for fulfilling the domestic needs of Ralla Singh. Learned counsel has argued that since the disputed land, as per Section 58 (d) of the Transfer of Property Act, 1882, falls under the category of Usufructuary mortgage, the argument of learned counsel for the petitioners that it falls under the category of Anomalous mortgage under Section 58 (g) of the Act, is not correct.

Heard, counsel for the parties.

At this stage, reference can be made to a judgment passed by **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others,** 2010 (1) RCR (Civil) 27, wherein for allowing or rejecting the application for amendment, some basic principles have been laid down by the Hon'ble Supreme Court, which are reproduced as under:-

- “(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact, lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the court should decline amendments, if a fresh suit on the amended claims would be barred by limitation on the date of application.”

A perusal of mortgage deed dated 08.08.1980 (Annexure P-3) shows that this mortgage was made in favour of defendant Nos. 1 to 8 by Ralla Singh. In para No.2 of the application for amendment (Annexure P-4), defendants-petitioners have specifically stated that Ralla Singh had sold the

mortgagee rights of the suit land to Bishan Singh (father of defendant Nos. 1 to 8). However, this fact has been wrongly mentioned in the application for amendment of written statement. This mortgage deed was very much in the knowledge of the defendants (petitioners) at the time of filing of the written statement (Annexure P-2). Even in the written statement (Annexure P-2), it has been stated that the disputed land was mortgaged by Amar Singh to Ralla, who later on sold the mortgagee rights to Bishan Singh son of Maan Singh and put him in possession of the suit property. After the death of Bishan Singh, the defendants came in possession thereof. Later on, Amar Singh sold the suit property to the plaintiffs. Even in the written statement, it was wrongly pleaded that Ralla had sold the mortgagee rights to Bishan Singh (father of defendant Nos.1 to 8). Hence, as per the registered mortgage deed (Annexure P-3), once the land stood mortgaged in favour of defendant Nos. 1 to 8 (petitioners) by Ralla Singh in the year 1980, they have intentionally taken wrong averments in written statement (Annexure P-2) and even in the application for amendment (Annexure P-4).

The Hon'ble Supreme Court in **Revajeetu Builders & Developers'** case (supra), has held that the Court should discourage *mala fide* amendments, designed to delay the legal proceedings. In para 66 of the judgment, it has been observed as under:-

“66. The purpose of imposing costs is to:

- a) Discourage *mala fide* amendments designed to delay the legal proceedings;
- b) Compensate the other party for the delay and the inconvenience caused;
- c) Compensate the other party for avoidable expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and
- d) To send a clear message that the parties have to be careful while drafting the original pleadings.”

Plaintiffs, in the present suit, have not disputed the mortgage deed in favour of the defendants. Their case is only for redemption of the mortgaged land, which initially belonged to Amar Singh and even this fact is not in dispute between the parties as is apparent from the written statement (Annexure P-2). Hence, for proper adjudication of the matter, amendment in the written statement in respect of the mortgage deed (Annexure P-3), was not necessary. This Court is of the view that application for amendment was made only to delay the legal proceedings and it does not fall in the criteria laid down by Hon'ble the Supreme Court in the aforesaid judgment.

Further, Hon'ble the Supreme Court in **Usha Balashaheb Swami & others vs. Kiran Appaso Swami & others**, 2007 (2) RCR (Civil) 830, has held that Order 6 Rule 17 CPC confers power to Court, at any stage of proceedings, to allow alteration and amendments of the pleadings, if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties.

In the facts of the present case, plaintiffs have already concluded their evidence and the trial is at the stage of recording of evidence of defendants (petitioners). Registered mortgage deed dated 08.08.1980 (Annexure P-3) has been executed by Ralla in favour of defendant Nos. 1 to 8 (petitioners) and not in favour of their father Bishan Singh, as stated by them in the original written statement (Annexure P-2) as well as in the application for amendment (Annexure P-4). Once, the registered mortgage deed was executed in favour of defendant No.1 to 8 and they were put in possession of the suit property by Ralla, they cannot take a plea that they have found this mortgage deed from the papers of their father Bishan Singh

the final stage after five years of commencement. Moreover, the plaintiffs are not disputing mortgage of land by Ralla in favour of the defendants. The plaintiffs are vendees of original owner Amar Singh and are seeking redemption of mortgage. Application for amendment of written statement has been filed at the stage when evidence of defendants are being recorded before the trial Court.

After going through the facts and circumstances of the case, this Court is of the view that application for amendment of the written statement (Annexure P-4) has been filed only to delay the legal proceedings with *mala fide* intention and the same has been rightly dismissed by the trial Court. No ground is made out to interfere in the impugned order.

Dismissed.

16.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No