IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8763 of 2015 (O&M)
Date of Decision: 10.10.2017

Chhanno Devi @ Tunna Devi

...Petitioner(s)

Versus

Chatru alia Chaturbhuj Sharma through LRs. and others

... Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. J.P. Sharma, Advocate
for respondents No.1 to 5.

ANITA CHAUDHRY, J.

The petitioner has laid challenge to the order dated 04.11.2015 vide which learned Civil Judge, (Junior Division), Narnaul dismissed the application filed by the defendants seeking amendment in the written statement. It is necessary to give the brief facts.

The plaintiffs Chatru alia Chaturbhuj Sharma and others filed a suit for declaration that the Sale Deed No.414 dated 11.07.2011 executed by defendants No.2 and 3 in favour of defendant No.1 be cancelled as they were also co-sharers in the property and specific Khasra could not have been sold and they were in possession of the property which had been shown to have been sold. They were seeking a decree for declaration and permanent injunction that the sale be considered as a share in the joint land and not of specific khasra number.

The defendants filed a written statement contesting the suit. They had specifically pleaded that the sale had been effected after a complete inquiry and after paying a sum of Rs.49.5 lacs and after the sale deed had been executed they had collected construction material and were tethering their cattle and the question of joint ownership did not arise. It was specifically pleaded that defendants No.2 and 3 had sold 3 kanals 6 marlas of land to defendant No.1 for Rs.49.5 lacs.

The trial was proceeding and the plaintiff had examined the entire evidence and the case was fixed for defendants evidence when they moved an application in September, 2015 for amendment of the written statement seeking permission to amend the written statement as there was an inadvertent clerical mistake. It was pleaded that the land had not been purchased for Rs.49.5 lacs and it was purchased only for small consideration of Rs.4.50 lacs and this mistake came to their notice recently and they may be allowed to make correction in the written statement in several paragraphs. It was pleaded that though the sale was only for a sum of Rs.4.50 lacs but the sale deed had been executed as per collector's rate of valuation of Rs.49.5 lacs.

The trial after hearing both the sides dismissed the application as it noticed that the sale consideration mentioned in the sale deed was Rs.49.5 lacs and it was not a clerical mistake nor made inadvertently.

Counsel for the petitioner contends that in Form No.60 which was furnished with the Income Tax Department, the sale consideration was mentioned as Rs.4.50 lacs and it was a clerical mistake in the written statement and no prejudice would be caused to the other side and amendment should be allowed.

On the other hand, the submission is that the correct facts are not being disclosed and the defendants had got a notice from the Income Tax Department to disclose the source of their funds and, it is, therefore, they are seeking permission to amend the written statement and are making a foundation for approaching the Sub Registrar to amend the sale deed. It was urged that the sale consideration is mentioned as Rs.49.5 lacs at 3 places in the sale deed. The copy of the sale deed was also shown during the course of the arguments. Relying upon '***Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others 2007(1) R.C.R. (Civil) 481***', it was urged that the amendment cannot be allowed since the trial has commenced and there is no mistake and a perusal of the sale deed would show that the sale consideration is shown as Rs.49.5 lacs and not of Rs.4.50 lacs.

The suit was filed in 2011. Both the set of defendants filed separate written statement. Both of them had mentioned that the sale consideration was Rs.49.5 lacs. Issues were framed and the trial had begun and the plaintiff had closed its evidence in May, 2013.

The case was fixed for defendant's evidence when they filed an application in 2015 seeking permission to amend the written statement and correct the clerical mistake.

The copy of the sale deed had been shown during the course of proceedings. Sale consideration mentioned therein is Rs.49.5 lacs. The same amount is referred to in the written statement of both sets of defendants. There is no mistake as that figure has been lifted from the sale deed. The trial is at a close. The plaintiff had closed its evidence much earlier. It appears that the application has been filed to lay a foundation as they have received Income Tax notice. If indeed there was any mistake then the executant had a separate remedy and not in this manner. The consideration amount is not in issue in the suit.

I find no infirmity in the order. The revision is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 10, 2017
ps-I

Whether Reasoned/Speaking **Yes/No**
Whether Reportable **Yes/No**