

224
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1445-2015 (O&M)
Date of decision : 13.3.2018

Pavan Sher Singh

..... Petitioner

Versus

Jaipal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Divyanshu Jain, Advocate for the petitioner.

Mr. Aman Priye Jain, Advocate
for respondents No. 1 and 2.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 20.1.2015 (Annexure P-8), passed by learned Civil Judge (Junior Division), Sohna, vide which an application filed by the petitioner-plaintiff under Order VI Rule 17 of the Code of Civil Procedure 1908, for amendment of the plaint was dismissed.

Heard.

Plaintiff-petitioner filed a suit for declaration with consequential relief of permanent injunction praying that his name is entitled to be incorporated as *pattedar* with defendant-respondent No. 2 in the land in dispute by way of correction of mutation. He also prayed that defendants-respondents No. 1 and 2 have no right of transferring the *pattedari* rights to any third party till the land is divided by metes and bounds. Permanent injunction was also sought restraining the defendants-respondents No. 1 and 2 from transferring the land measuring 3 kanals 15 marlas in dispute to third party.

It comes out that in the said case, issues were framed on 3.4.2013 and thereafter three adjournments were granted to the plaintiff to lead evidence after which the present application was filed. By way of amendment plaintiff wants to add para No. 7-A and 8 in the plaint and relief No. (iv). By way of said amendment plaintiff want to add that lease deed No. 3268 dated 12.10.1995 is null and void and a sham transaction and result of fraud and collusion between defendants No. 1 and 2. In order to gain undue benefit and advantage, defendant No. 1 fraudulently got the conveyance deed of lease hold rights dated 12.10.1995 in favour of defendant No. 2 which is illegal. He also wants to add prayer of declaration for setting aside the said conveyance deed of lease hold rights No. 3268 dated 12.10.1995 being sham transaction and null and void.

It comes out that admittedly, in this case trial has already begun and three opportunities have been granted to the plaintiff. A perusal of the plaint shows that in the plaint, it was specifically pleaded that defendant No. 3 vide *pattanama* relinquished his *pattedari* rights for remaining period and in the said transfer, all the *pattedari* rights in the suit land have been transferred in favour of defendant No. 2, to the exclusion of the plaintiff.

It goes to show that plaintiff had the knowledge that a conveyance deed of *pattedari* rights has been created. He knew that he was required to challenge the same and mention the factum of details of the said conveyance deed also. However the same was not done.

Learned counsel for the petitioner has contended that there was a relationship of trust between him and defendant No. 1 and that both the

sale deed and conveyance deed are of the same date i.e. 12.10.1995. The proviso has been added to Order VI Rule 17 of the Code of Civil Procedure, 1980, wherein it has been laid down that no amendment is to be allowed after the commencement of the trial, if despite due diligence, the plaintiff could have the knowledge of the said fact. The creation of *pattedari* rights was within the knowledge of the plaintiff when he filed the suit. However, no details of the conveyance deed were mentioned nor any relief regarding the said conveyance deed was claimed.

In this case though no witness has been examined, but after framing of issues, three opportunities were granted to the plaintiff and it was thereafter, that the present application has been filed.

Learned counsel for respondents has referred to an authority of Hon'ble Supreme Court delivered in *Ajendraprasadji N. Pande and another versus Swami Keshavprakeshdasji N. and others*, 2007 (1) RCR (Civil) 481, wherein the amendment of written statement was sought and some opportunities were granted to defendant(s) to lead evidence and even three witnesses were already examined but the said amendment had been disallowed by the Hon'ble Supreme Court.

Learned counsel for the petitioner contends that in this case no witness has been examined. Therefore, the trial has not commenced. He relies upon an authority passed by this Court in *Ramanand versus Sedhu and others*, 2010(2) RCR (Civil) 31, wherein it was held that if the facts are brought to the knowledge of the counsel and who despite having received all the relevant documents and instructions committed a bona fide error then

amendment is to be allowed as it is the case of due diligence. However, in the present case in the application, nowhere it has been stated that conveyance deed had been handed over to the counsel and he failed to incorporate and challenge the same. The ground is that non-incorporation of the said fact was on account of lack of technical and legal issue on the part of plaintiff and lack of thoughtful consideration to the matter by previous counsel while drafting plaint.

I am of the view that the said ground cannot be taken as due diligence. It is not alleged that documents were brought to the notice of the counsel and handed over to him and it was not incorporated by him.

It being so, I do not find any ground to interfere in the impugned order dated 20.1.2015 (Annexure P-8), passed by learned Civil Judge (Junior Division), Sohna and the present revision petition is dismissed, accordingly.

Since the main petition has been dismissed, the miscellaneous application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

13.3.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No