

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-1549-2018

Date of decision: 16.04.2018

Ram Murti and another

..... Petitioners

Versus

Des Raj and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Malkeet Singh, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

1. Through this revision under Article 227 of the Constitution of India, challenge has been laid to the order dated 09.02.2018 (Annexure P-6) of the Ist Appellate Court, whereby application of the petitioner-plaintiffs under Order VI Rule 17 CPC for amendment of plaint has been dismissed.

2. Put pithily, the petitioner-plaintiffs filed a suit in the year 2006 against the respondent-defendants, who are their real brothers for declaration to the effect that they are owners in possession of the suit land as per their entitlement on the basis of some family settlement. The trial Court after holding trial dismissed the same vide judgment dated 21.04.2014 (Annexure P-3) i.e. after 8 years of its institution.

3. Being aggrieved, the petitioner-plaintiffs filed an appeal before the Ist Appellate court. During the pendency of said appeal, the petitioner-plaintiffs moved an application under Order VI Rule 17 CPC for amendment of plaint filed in the year 2006, whereby they wanted to

challenge the orders of (i) the Collector, Phillaur, dated 10.12.2004, passed

in appeal against the order dated 16.09.2003 of the Tehsildar-cum-Assistant Collector Ist Grade, Phillaur, whereby the partition applications of respondent No. 3-Durga Dass and other co-sharers were allowed by him; (ii) dated 02.02.2006, of the Commissioner Jalandhar Division, Jalandhar, passed in revision against the order dated 10.12.2004 and (iii) dated 08.12.2006 of the Financial Commissioner (Revenue) Punjab, Chandigarh, passed in ROR No. 618 of 2006 of the petitioner-plaintiffs. After due contest and hearing both the sides, the Ist Appellate Court, dismissed the aforesaid application of the petitioner-plaintiffs vide order impugned herein.

4. Learned counsel contends that for the fault of counsel of the petitioner-plaintiffs, they should not be made to suffer. Learned counsel for the petitioner-plaintiffs before the trial Court did not challenge the aforesaid orders of the revenue authorities, affirming the order dated 16.09.2003 of the Assistant Collector Ist Grade, Phillaur, whereby he partitioned the suit land amongst the co-sharers for the reasons best known to him, despite the fact that every order of the revenue authorities was brought to his notice. The Ist Appellate Court, ought to have allowed the application for amendment of plaint of the petitioner-plaintiffs by compensating the respondent-defendants with costs for delay, if any, in seeking the aforesaid amendment.

5. Having given considerable thoughts to the submissions made by learned counsel for the petitioner-plaintiffs, this Courts finds the instant revision being completely devoid of any merit for the reasons to follow:

6. Prior to filing of the present application for amendment of plaint, the petitioner-plaintiffs had filed similar application earlier also

which was allowed vide order dated 01.08.2012. At that time, the petitioner-plaintiffs did not challenge the aforesaid orders dated 10.12.2004, 02.02.2006 and 08.12.2006, of the appellate and revisional revenue authorities. In other words, no such amendment was sought by them in their first application for amendment. Thereafter, the suit of petitioner-plaintiffs was finally decided vide judgment and decree dated 21.04.2014 (Annexure P-3) i.e. after two years of allowing the petitioner-plaintiffs to amend their plaint. The trial Court relying upon the principle of merger dismissed the suit of the petitioner-plaintiffs for failure to challenge the above-referred orders.

7. The petitioner-plaintiffs filed their first appeal on 17.05.2014 and went in a great slumber. They awoke out of the same after three years in the year 2017 i.e. 11 years after the institution of suit on 08.05.2006 and moved the instant application for the second time for amendment of plaint. Therefore, the Ist Appellate Court, while observing this fact that this second application for amendment of plaint being barred by limitation has rightly dismissed the same.

8. Before parting with the case, it would be appropriate to mention here that this is totally a luxury and dishonest litigation being pursued by the petitioner-plaintiffs against their own real brothers or their off-springs, inasmuch, as the petitioner-plaintiffs have permanently settled themselves abroad since last 40-45 years. Their only intention and purpose is to fetch some valuable part of the suit land earned by their deceased father by litigating against their own brothers and to sell the same and take away the money aboard.

9. I have gone through the impugned order and find no illegality or perversity in the same. The instant revision being completely devoid of any merit is dismissed.

April 16, 2018
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(RAMENDRA JAIN)
JUDGE

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