

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2105 of 2017

Date of Decision: April 02, 2018

Amarjeet Singh & others

...Petitioners

Versus

Des Raj & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Chirag Wadhwa, Advocate,
for the petitioners.

Mr.Gaurav Arora, Advocate,
for respondent No.1.

Mr.Ashish Aggarwal, Senior Advocate with
Mr.Vijay S. Kajla, Advocate,
for respondent No.2.

Mr.Gaurav Chopra, Advocate,
for respondent No.3.

Mr.M.S.Khillan, Advocate,
for respondent Nos.5 to 7.

AMIT RAWAL, J.

The present revision is directed against the order dated 7.3.2017 (Annexure P-6), whereby application for amendment of the plaint at the stage of cross-examination of PW-6 Manjeet Singh, has been declined.

Mr.Chirag Wadhwa, learned counsel representing the petitioners submitted that the petitioner-plaintiffs instituted the suit for declaration with consequential relief of permanent injunction to the effect that the sale deeds No.1482/1 dated 14.1.1995 executed by defendant No.1 in favour of defendant No.3, sale deed No.646/1 dated 17.6.2010 executed by defendants No.1 and 4 in favour of defendant No.2 and mutation

No.2747 entered and sanctioned on the basis of said sale deeds, sale deed No.1528/1 dated 4.11.2010 executed by defendant No.2 in favour of defendant No.1, gift deed No.6311/1 dated 30.3.2012 executed by defendant No.2 in favour of defendant No.1 and sale deed No.65/1 dated 16.4.2012 executed by defendant No.1 in favour of defendants No.5 to 7 being illegal, null and void, ineffective, inoperative and not binding on the rights of the plaintiffs with consequential relief of permanent injunction restraining the defendants from interfering in peaceful possession with further injunction restraining the defendants not to sell, transfer, gift, alienate the land in question having area measuring 8 kanals 6 marlas.

The aforementioned sale deeds were challenged on the ground that neither defendant No.1 nor defendant No.4 were having any right, title or authority/power to sell out the land of the Taraori Mandi Goods Transport Union, Taraori, Tehsil Nilokheri, District Karnal in favour of defendant No.2 or any body else as the said land was exclusive property of the aforementioned Union, but was purchased through defendant No.1, which fact was evident from the sale deed dated 25.8.1995.

The aforementioned suit was contested by defendants No.1 and 4 by filing joint written statement taking pleas of estoppel, maintainability, cause of action, want of proper court fee and jurisdiction. It was alleged that on 6.6.2010, members of the Union including plaintiff No.3 unanimously resolved that land measuring 8 kanals 6 marlas, described in Para No.2 of the preliminary objections be sold, as the Union was under heavy debt and authorised the defendants to execute the sale deed. The resolution dated 6.6.2010 bore the signatures of Chanan Singh (plaintiff No.3). It was on the basis of the aforementioned authority, defendants No.1 and 4 executed the

sale deeds for a valuable consideration.

Defendants No.5, 6 and 7 filed a separate written statement raising all the preliminary objections and denying the averments made in the plaint.

When the suit was pending for plaintiffs' evidence, petitioner-plaintiffs moved an application (Annexure P-4) dated 13.2.2017 seeking amendment in the plaint on the ground that while preparing the case for cross-examination of defendants' evidence, plaintiffs came to know that resolution dated 6.6.2010, relied upon by the defendants, had not been specifically pleaded as the sale deeds aforementioned were executed on the basis of the said resolution and urged the trial Court to add Para 8(a) and the following prayer paragraph:-

“The resolution dated 6-6-2010 is totally illegal and against the mandatory provisions of law and has been passed without the consent, knowledge and notice of all the members of The Taraori Mandi Goods Transport Union, Taraori Tehsil Nilokheri District Karnal including the plaintiffs and the same is procured by the defendants no.1 with the collusion of defendants no.2 and 4 as well as one Manjeet Singh, member of The Taraori Mandi Goods Transport Union, Taraori Tehsil Nilokheri District Karnal and eight truck-drivers and as such the defendants no.1 and 4 have no power or authority to sell out the valuable land measuring 8K 6M of Mandi Goods Transport Union, Taraori Tehsil Nilokheri District Karnal in meager sale consideration to the defendant no.2 who is son of the defendant no.1 and therefore the resolution dated 6-6-2010 is illegal one and the same is not binding upon The Taraori Mandi Goods Transport Union, Taraori Tehsil Nilokheri District Karnal and its members.”

“as well as the resolution dated 6-6-2010 on the basis of which sale deed no.646/1 dt.17-6-2010 was executed by the

defendants no.1 and 4 in favour of the defendant no.2”

The aforementioned application was contested by defendants No.1 and 4 by filing joint reply and by respondent No.2 by filing separate reply.

The trial Court, vide impugned order Annexure P-6 dismissed the application by holding that the application was bereft of due diligence and, therefore, amendment at belated stage cannot be allowed. In fact, the amendment should have been sought at initial stage and not at the stage of defendants' evidence and since the matter was fixed for cross-examination of the witness of the defendants and the same being identified as action plan, dismissed the application.

Mr.Chirag Wadhwa, learned counsel for the petitioners submitted that the impugned order is not sustainable in the eyes of law. No prejudice would be caused to the defendants as the resolution dated 6.6.2010 was an outcome of fraud and misrepresentation. In fact, the same was not passed authorising defendants No.1 and 4 for executing the sale deed in the manner and mode, which has been challenged in the suit. It does not tantamount to altering the nature of the suit.

Mr.Gaurav Arora, learned counsel for respondent No.1, Mr.Ashish Aggarwal, learned Senior Counsel assisted by Mr.Vijay S.Kajla, representing respondent No.2 and Mr.M.S.Khillan, learned counsel for respondents No.5 to 7 submitted that the amendment cannot be permitted to be allowed at the stage of defendants' evidence as the factum of resolution was disclosed as way back on the date when the written statement was filed in 2012. Plaintiff himself is signatory of resolution and cannot be permitted to approbate and reprobate in the same manner. The expression “due

diligence” as incorporated in 2002 amendment, has not been complied with and rightly so, application was dismissed and, thus, prayed for affirming the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioners, for, the amendment sought/noticed above is most innocuous and would not change and alter the nature of the suit, for, owing to the resolution, the sale deeds have been challenged. The other party would be at liberty to raise all possible pleas in the amended written statement and raise arguments at the appropriate stage with regard to the amendment whether it was barred by limitation or not. The trial Court ought not to have dismissed the application on the ground that the case was listed for action plan. Bringing the case in the action plan cannot be permitted to take away the valuable right of a party. The Courts are required to do justice and not to dispose of the case at a pace which resulted into miscarriage of justice. Justice always appears to be done and not for the sake of it.

As an upshot of my aforementioned findings, the impugned order is not sustainable in the eyes of law and hereby set-aside. Application for amendment of the plaint is allowed subject to payment of 10,000/- as costs to defendants in equal proportion.

Revision petition stands allowed.

April 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No