IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.2387 of 2018 (O&M)
Date of Decision: November 21, 2018

Pardumman Singh Kohli

...Petitioner

Versus

Birinder Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Parvez Chugh, Advocate,
for the petitioner.

Mr. Sanjeev Kumar Arora, Advocate,
for respondent No.1.

*****

AMIT RAWAL, J.

Present revision, at the instance of the petitioner-plaintiff, has been directed against the impugned order, whereby the application for amendment of the plaint at initial stage of the trial has been rejected.

Plaintiff instituted the suit and claimed declaration being co-owner in joint possession of the land to the extent of 112 kanals 14 marlas by describing killa numbers over portion of land measuring 89 kanals 10 marlas by challenging the sale deed dated 15.12.2015 executed by defendant No.1- attorney holder as per the General Power of Attorney dated 09.03.2007 and for joint possession of the suit property.

It was alleged that the power of attorney holder without authority sold the land to defendant No.2 vide aforementioned sale deed as he was given attorney pertaining to property situated at Moti Bazaar, Hira Mandi Gate and Ferozepur City only but not with regard to the suit land.

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The amendment sought to be incorporated claiming alternative relief is as under:-

> "*That if this Hon'ble Court comes to the conclusion that the plaintiff is not entitled to the declaration as prayed for then the plaintiff is entitled to recover the amount of Rs.1,66,50,000/- which was the market value of the suit land on 15.12.2015. In fact, the value of the land in the sale has been wrongly shown @ Rs.7,20,000/- per acre which is just the Collector rate. It is apt to mention here that sale deeds are not registered at lessor rate than the collector rate. The market value of the land in dispute is at least Rs.15 lac per acre and the total value of disputed land thus comes to Rs.1,66,50,000/- and not Rs.79,92,000/- as shown in the sale deed dated 15.12.2015. Plaintiff is entitled to recover Rs.1,66,50,000/- alongwith interest from 15.12.2015 from the defendant. If at all, relief of declaration is refused to the applicant/plaintiff.*"

Mr. Parvez Chugh, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the amendment will not change the nature of the suit as erroneously noticed by the trial court, but it would help the court in adjudication of the lis between the parties as the alternative prayer for precautionary measure has been sought. The other party would be at liberty to contest the same on merit.

On the other hand, Mr.Sanjeev Kumar Arora, learned counsel representing respondent No.1 submitted that in case the amendment is allowed, entire nature of the suit would be changed. A valuable right of law of limitation and maintainability of the suit has accrued in favour of the defendants. No reason of expression "despite exercise of due diligence" has also been pleaded.

I am afraid, the argument of Mr. Arora is not sustainable as the suit concededly is at the initial stage. Both the parties would be at liberty to

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rebut every pleas and press for framing of the issue in the absence of denial and lead evidence in support of the amendment by placing on record evidence which would help the court in effective adjudication of the lis. It does not amount to changing of the nature of the suit but explanatory in nature by adding the alternative prayer.

No other argument has been raised.

For the reasons stated above, the impugned order is set-aside. Amendment as sought is allowed. Amended plaint is permitted to be placed on record. Revision petition stands allowed.

November 21, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

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

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