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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4347-2016

Date of decision : 20.03.2018

Harjinder Singh

... Petitioner(s)

Versus

Surjit Singh Chohan and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Chawla, Advocate
for the petitioner.

Mr. Anupam Bhardwaj, Advocate
for respondent Nos.3, 5 & 6.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 20.05.2016 (Annexure P-1), whereby the application for amendment of the plaint at the stage of the plaintiff's evidence has been dismissed.

Mr. Anil Chawla, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the suit for permanent injunction restraining the defendants from creating any hindrance in the peaceful possession in respect of the forming part of Khasra No.1966 min, Building No.6701 situated at Village Sultanwind Sub Urban, now know as Partap Nagar, Amritsar, was filed against the respondents-defendants. When the suit after framing the issues, was listed for plaintiff's evidence, an occasion arose to move an application for amendment of the plaint for incorporating relief of mandatory injunction as well as challenging the sale deed, for, on

13.07.2013, the defendants dispossessed the petitioner-plaintiff. The Court below dismissed the application holding therein that it can mould the relief at any stage of the trial, particularly at the final stage, but the fact of the matter is that his client would not be permitted to lead evidence as it would be beyond pleadings. The objection can be raised by the other side at any time, even at the time of the leading the evidence. The aforementioned amendment is necessary and essential, being a subsequent event, therefore, the same would help the Court for adjudication of the *lis*. The factum of sale deed executed by defendant No.7 in favour of defendant No.8 was disclosed in the written statement filed on behalf of defendant Nos.7 & 8, thus, urges this Court for setting aside the impugned order, under challenge.

Learned counsel for the respondents-defendants No.3, 5 & 6 submitted that the amendment sought to be incorporated will entirely change the nature of the cause of action, much less, the suit. At the best the plaintiff should file a separate suit or can withdraw the suit and file the fresh one with better particulars. The impugned order, under challenge, is perfectly legal, justified and do not call for interference. The observation of the trial Court can always be pressed into service at an appropriate stage, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Chawla.

It would be apt to reproduce the amendment sought to be incorporated, which reads thus:-

“AND for mandatory injunction directing the defendants to deliver back the possession of the said portion as shown red

in the site plan after removing the malba/super structure standing thereon which they have raised illegally and unlawfully after passing of the restrain order dated 10-05-2013 and during the pendency of the case.

AND also suit for declaration to the effect that the alleged sale deed dated 09.02.2012 alleged to have been executed by Gurbax Singh son of Gurdeep Singh with respect to the alleged Plot No.1-A, bearing Khasra No.1965, 2100 min, Khewat Khatoni No.2017/3108 as per jamabandi for the year 2005-2006, is illegal, null and void, having no value in the eyes of law and has been procured/manufactured as a result of misrepresentation.

5-A That after hearing the arguments of counsel for both the parties on the application under Order 39 Rules 1 & 2 read with Section 151 of C.P.C. Filed by the plaintiff in the present case for the grant of ad-interim injunction, the said application was allowed by this Hon'ble Court vide order dated 10-05-2013, whereby the ad-interim injunction was granted in favour of the plaintiff and the defendants were specifically restrained from dispossessing the plaintiff from the portion shown as read in the site plan and as mentioned above, during the pendency of this Court. The order was passed in the presence of the defendants and they were fully aware about the said order, but however, the defendants after passing of the restrain order dated 10-05-2013 and without caring for the said order, have taken forcible possession of the property in dispute from the plaintiff and thereafter forcibly and illegally raised construction thereon. In this regard, the plaintiff moved number of applications to the Administration as well as to the higher police authorities, but no action has been taken thereon and in this way, during the pendency of the suit and without caring and bothering for the restrain order passed by this Hon'ble Court, the defendants have illegally and forcibly took possession of the said portion from the plaintiff. Since the

defendants have raised construction forcibly and illegally during the pendency of the case and after the passing of the restrain order and now the defendants are in illegal occupation of the suit property, therefore, the defendants are liable to remove the malba/super structure illegally and forcibly raised by them on the suit property and then to deliver back the possession of the illegally occupied portion to the plaintiff.

That the alleged sale deed dated 09-02-2012 alleged to have been executed by Gurbax Singh son of Gurdeep Singh with respect to the alleged plot No.1-A bearing Khasra No.1965, 2100 min, Khewat khatoni No.2017/3108 as per jamabandi for the year 2005-2006 is null and void, having no value in the eyes of law as the khasra No.1965 is a public passage as per revenue record and the defendant No.1 had procured/manufactured the alleged sale deed dated 09-12-2012 by misrepresentation, which was registered in the office of Sub-Registrar Amritsar vide document No.10965 joint vehi no.1, jild No.11356 and page No.6970. In fact the land of khasra no.1965 is a public passage and khasra no.2100 is situated at a distant place as is very far from the property in dispute. In fact, the property in question which the defendant No.1 is claiming is ownership under the garb of said alleged sale deed dated 9.12.2012, is infact bearing Khasra No.1966 and not khasra no.1965. As such, the alleged sale deed dated 9.2.2012 is liable to be declared as illegal, wrong, null and void and having no value in the eyes of law. It is pertinent to mention here that the execution of the alleged sale deed was not within the knowledge of the plaintiff earlier at the time of filing the present suit and it came to the notice of the plaintiff during the pendency of the suit when the defendants filed written statement and placed on record photocopy of the alleged sale deed and immediately thereafter the plaintiff filed the application under Order 6 Rule 17 read with Section 151 CPC praying for inserting the relief of declaration for

declaring the alleged sale deed dated 19.2.2012 as illegal, wrong, null and void and having no value in the eyes of law.

8-A That the cause of action for arose to the plaintiff and against the defendants on 10.5.2013 when this Hon'ble Court decided the application under Order 39 Ruyles 1 and 2 read with Section 151 CPC and passed an ad interim injunction thereby restraining the defendants from dispossessing the plaintiff from the portion shown as red in the site plan till the final decision of the suit and it also arose thereafter on 13.7.2013 when the defendants dispossessed the plaintiff from the suit property forcibly and illegally while taking law into their own hands and the cause of action also arose when after taking forcible possession the defendants raised construction on the suit property illegally and unlawfully during the pendency of the case and then the matter was reported to the police, but no action was taken against the defendants filed written statement and placed on record photocopy of the alleged sale deed dated 9.2.2012 before this Hon'ble Court as well as before the police authorities.”

On perusal of the aforementioned averments, I am of the view that a subsequent event had occurred on 13.07.2013, which would subject to adjudication on the basis of the evidence. In the absence of the mandatory injunction, the plaintiff may not be confronted with an argument or objection with regard to the maintainability of the suit or evidence beyond the pleadings. The disclosure of the sale deed was also a cause of action enabling the petitioner-plaintiff to seek the amendment as the sale deed is of 09.02.2012, whereas the suit was filed on 11.09.2012.

Mr. Chawla, learned counsel for the petitioner-plaintiff specifically submitted that particulars of the sale deed were not known to the plaintiff, otherwise the same would have been challenged. However, on

acquiring the knowledge, the application was moved immediately. The observation of the trial Court in keeping the relief part open at the appropriate stage, is, in my view, too wide interpretation and there may be any legal obstacles. Amendment was sought at stage, when the plaintiff's evidence has not started.

As an upshot of my observations, I am of the view that the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside and the application seeking amendment is allowed. The petitioner-plaintiff is permitted to amend the plaint and file the same within a period of 15 days from the date of the receipt of the certified copy of this order and thereafter, the trial Court shall proceed further in accordance with law by permitting the defendants to file the amended written statement.

With the aforesaid observations, the present revision petition stands allowed.

20.03.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No