

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4505 of 2017 (O&M)

Date of decision:30.08.2018

Gurmeet Singh

... Petitioner

Vs.

Kiratpal Singh and others

... Respondents

CR No.4524 of 2017 (O&M)

Gurmit Singh

... Petitioner

Vs.

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. A.S.Gill, Advocate
for respondents No.1 and 2 (in CR No.4505 of 2017) and
for respondents No.2 and 3 (in CR No.4524 of 2017).

Mr. Bhupinder Gupta, Advocate
for respondent No.3 (in CR No.4505 of 2017) and
for respondents No.4 and 5 (in CR No.4524 of 2017).

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions
bearing Nos.4505 and 4524 of 2017.

The present revision petitions have been filed against the
impugned order dated 08.02.2017, whereby, an application of the

petitioner/defendant No.2 under Order 6 Rule 17 of Code of Civil Procedure for amendment of the written statement/plaint in a suit titled as “Kiratpal Singh and another Vs. Jagir Singh and another” (hereinafter called as “first suit”) and “Gurmit Singh Vs. Mohinder Singh and others” (hereinafter called as “second suit”) respectively before commencement of trial, has been rejected, in essence, petitioner-Gurmeet Singh is the defendant in first suit and plaintiff in second suit.

Mr. Jagjot Singh, learned counsel appearing on behalf of the petitioner in both the petitions submitted that in a suit filed by the plaintiffs for declaration to the effect that they were owner in possession of land measuring 93 kanals 05 marlas on the basis of sale deed dated 08.10.2007 and 10.10.2007 executed by Gurmeet Singh-defendant No.2 through attorney by late Ajit Kaur mother of the defendants widow of Sadhu Singh son of Santa Singh and Gurmeet Singh defendant through his attorney in respect of land described therein.

In paragraph 4 of the preliminary objection of the written statement and as well as in various other paragraphs, it was stated that the execution of the sale deeds, aforementioned, was denied by stating that Mohinder Singh son of Daulat Singh was never appointed as attorney to sell his land as power of attorney was forged and fabricated, much less was never executed. However, in the application filed under Order 6 Rule 17 of Code of Civil Procedure, the amendment sought to be incorporated in written statement was in the following manner:-

“(a) To delete the words starting from “nor the answering

defendanttoexecuted by answering defendant” in line Nos. 2 to 6 on Page No.3 of Para No.4 of “Preliminary Objections” of the written statement and in lieu to substitute the words “in fact the answering defendant no.2 Gurmit Singh had appointed Mohinder Singh, s/o Daulat Singh to be his attorney which was later on cancelled and revoked by defendant no.2.”

(b) To delete the words starting from “nor the answering defendant....tonever executed by answering defendant” in line nos.3 to 7 of para no.1 of “on merits” on page no.4 of the written statement, and in lieu to substitute the words “in fact the answering defendant no.2 Gurmit Singh had appointed Mohinder Singh, s/o Daulat Singh to be his attorney which was later on cancelled and revoked by defendant no.2.”

© To delete the words starting from “nor the answering defendant....tonever executed by answering defendant” in line nos.5 to 9 of sub para (c) of para no.2 of “on merits” on page no.5 of the written statement, and in lieu to substitute the words “in fact the answering defendant no.2 Gurmit Singh had appointed Mohinder Singh, s/o Daulat Singh to be his attorney which was later on cancelled and revoked by defendant no.2.”

5. That the case is still at the initial stage issues are yet to be framed and trial has yet to begin.

6. That the amendment sought, if allowed, will not change

the nature of the defence in any manner.

7. That the amendment sought is necessary for the just and proper decision of the case on merits.

8. That the mistake is not intentional or deliberate, but bonafide and due to the reasons as explained above.

9. That no prejudice shall be caused to the plaintiffs, whatsoever, if the amendment sought is allowed to be incorporated in the written statement filed by defendant no.2.

10. That there are sufficient grounds to allow the application.”

In essence, petitioner-defendant No.2 wanted to clarify that he had appointed Mohinder Singh as attorney but the said attorney was cancelled and revoked. Similar amendment sought to be incorporated in the plaint by incorporating the following paragraphs:-

“(a) To delete the words from head note “and the plaintiff never appointed Shri Mahinder Singh, s/o Daulat Singh as his attorney” in line 20 to 22 on page no.4 of the plaint.

(b) To delete the words starting from “the plaintiff never appointedtoto sell the suit land” in line nos.3 to 7 of para no.7 on page no.10 of the plaint and in lieu to substitute the words “in fact the plaintiff Gurmit Singh had appointed Mohinder Singh s/o Daulat Singh to be his attorney which was later on cancelled and revoked by the plaintiff.”

(c) To delete the words starting from “and the plaintiff

never appointedtoas his attorney” in line nos. 16 to 18 of para no.7 on page no.10 of the plaint.

(d) To delete the words from the prayer clause “and the plaintiff never appointed Shri Mohinder Singh, s/o Daulat Singh as his attorney” in line no.25 and 26 on page no.15 and line no.1 on page no.16 of the plaint.

(e) To delete the words “when the plaintiffs filed the suit for declaration against the defendant” in line no.6 to 8 and to substitute the same to read as “when the defendants filed the suit for declaration against the plaintiffs”.

The amendment will not alter or change the defence in the written statement and the plaint. The suit filed by the respondent is at initial stage. In the absence of any pleadings, the evidence cannot be looked into as it will be fatal to the adjudication of lis, therefore, the orders under challenge are without jurisdiction.

Mr. A.S.Gill and Mr. Bhupinder Gupta, learned counsel appearing on behalf of the respondents submitted that orders under challenge are perfectly legal and justified. The amendment sought to be incorporated tantamounts to altering the stand taken in the written statement and plaint, much less withdrawing the admission which is not permissible in law as it would alter the cause of action in the suit and the defence taken in the written statement, for, valuable right had accrued in favour of the respondents.

It is settled law that amendment cannot be permitted when the issues have already been framed. The issues have already been framed in Kiratpal's case, who did not deny the fact that in another suit filed by petitioner/defendant No.2, issues have not been framed and thus, urged this Court for dismissal of the revision petition.

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 Mr. Jagjot Singh.

On cumulative reading of the amendment sought to be incorporated in the plaint and written statement reproduced (supra), I am of the view that such pleading by way of amendment does not tantamount to withdrawing the admission but clarificatory in nature, for, revocation of power of attorney would be the documentary evidence. In case, such document is brought on record in the absence of pleadings, the same cannot be looked into.

I cannot remain unmindful of the fact that suit filed by Kiratpal Singh claiming declaration by virtue of sale deed, whereas, petitioner-Gurmeet Singh sought cancellation of the licence, thus, it is yet to be proved in accordance with law.

Resultantly, the applications for amendment of the written statement and plaint are hereby allowed. Let the amended written statement and plaint be filed within a period of 30 days from the date of receipt of certified copy of this order.

The revision petitions are allowed subject to costs of ₹5000/-
each which is a condition precedent.

August 30, 2018
savita

Whether Speaking/Reasoned
Whether Reportable

(AMIT RAWAL)
JUDGE

Yes/No
Yes/No