

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : C. R. No. 5510 of 2017

Date of Decision : December 13, 2018

Lal Chand Petitioner

vs.

Gulshan Vir Singh Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Surender Pal, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 29.07.2017 passed by the Additional Civil Judge (Senior Division), Kalka (for short – the trial court), through which an application preferred by the petitioner under Order VI Rule 17 CPC seeking therein to amend his written statement has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in February 2010, the respondent filed a suit seeking therein to restrain the petitioner-defendant from interfering in the peaceful possession of the respondent over a residential plot measuring 04 biswas situated in Khasra No. 98 situated in Village Dharampur, Tehsil Kalka, District Panchkula (for short – the suit property).

On being put to notice, the petitioner-defendant appeared before the trial court and filed a written statement inter alia contending therein that the suit property situated in Khasra No. 98 was owned and possessed by the petitioner and that the respondent/plaintiff owned and possessed 04 Biswas of land existing in Khasra No.100 in Village Dharampur, Tehsil Kalka, District Panchkula.

On the dispute raised by the parties, the trial court framed the issues on 08.04.2013. Thereafter, the respondent-plaintiff led his evidence and closed the same on 14.01.2016, after which the petitioner-defendant started to lead his evidence. On 11.03.2017, when the petitioner-defendant had already produced as many as 10 witnesses, an application was preferred by him seeking therein to amend his written statement to include in his pleadings the factum of three sale deeds dated 30.06.1992, 28.07.2005 and 08.09.2005, which according to the petitioner, depicted that the suit property and the property owned and possessed by the petitioner were different properties having distinct boundaries. Through the order, which is the subject matter of challenge in the present proceedings, the trial court considered and dismissed the aforesaid amendment application preferred by the petitioner.

Learned counsel for the parties have been heard and with their able assistance, the record perused.

The undisputed facts which emerge from the record as also after hearing learned counsel for the parties are that the respondent had filed a suit in February 2010 seeking therein to injunct the petitioner, who was the defendant in the suit, from interfering in his peaceful possession over

the suit property, which according to him, measured 04 Biswas and was situated in Khasra No. 98 in Village Dharampur, Tehsil Kalka, District Panchkula. On being put to notice, the respondent appeared before the trial court and through written statement dated 16.02.2010, denied the respondent's claim by primarily stating therein that the suit property was different and distinct from the property owned and possessed by the petitioner as the suit property was alleged by the respondent/plaintiff to be situated in Khasra No. 98, whereas the property he owned and possessed, was in Khasra No. 100.

The trial court framed issues on 08.04.2013, on which the respondent-plaintiff led his entire evidence and closed the same on 14.01.2016. Thereafter, when the petitioner-defendant had produced as many as 10 witnesses, he moved an application seeking therein to amend his written statement to primarily include in his pleadings the factum of three sale deeds dated 30.06.1992, 28.07.2005 and 08.09.2005, with an attempt to show that the suit property and the property owned and possessed by the petitioner were different properties having distinct boundaries.

Once in the written statement filed by the petitioner-defendant way back on 16.02.2010, the issue that the suit property was distinct from the property owned and possessed by him had been taken, no further pleadings in that regard can be permitted especially when the same were sought to be introduced after over seven years of the filing of the written statement with no explanation for the delay and after the respondent-plaintiff had exposed his entire case as also for the reason that no explanation was given by the petitioner-defendant as to why such pleadings

were not taken by him earlier.

In the amendment application preferred by the petitioner, it has simply been stated that the petitioner had filed his written statement on 16.02.2010 and that during the pendency of the suit, certain new facts have come to his knowledge occasioning the amendment application. Such averment by the petitioner is found to be vague as it does not show how the petitioner came into knowledge of the sale deeds which he now seeks to include in his written statement especially when between the filing of the written statement and the amendment application, there is a wide gap of over seven years as also for the reason that the sale deeds dated 30.06.1992, 28.07.2005 and 08.09.2005 were in existence much prior to the filing of the written statement.

If the plea of the petitioner is to be accepted, it would virtually wash-off over seven years of the proceedings before the trial court as on acceptance of the petitioner's plea, the stage of trial would go back to February 2010 when the petitioner had initially filed his written statement. In the facts of the present case, this cannot be permitted especially in the light of the observations made above that the petitioner has failed to disclose as to why the pleas sought to be taken now in the written statement were not taken earlier and as to how and when he came in knowledge of the same.

Dismissed.

(DEEPAK SIBAL)

JUDGE

December 13, 2018

monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.

