

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5675 of 2017 (O&M)

Date of decision:19.02.2018

Jaskaran Singh and others

... Petitioners

Vs.

Swaran Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Raman Goklaney, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner-defendants are in revision petition against the impugned order dated 14.07.2017 (Annexure P-1), whereby, the application moved by the respondent-plaintiffs seeking amendment of the plaint with regard to certain averments which were in their knowledge, has been allowed.

Mr. Raman Goklaney, learned counsel for the petitioner-defendants submitted that the respondent-plaintiffs instituted a suit seeking declaration to the effect that they are owners of the suit land measuring 102 kanals 5 marlas on the premise that their father- Raghbir Singh did not execute a General Power of Attorney (GPA) but now at the stage of their evidence, they wanted to incorporate the amendment in the following manner:-

“A) That in the heading of the plaint the date of the

judgment and decree passed by Sh. B.R.Garg, Sub Judge IIInd Class, Ferozepur was mentioned to be 11.2.1993 instead of 11.2.1994. In fact, the judgment was passed on 11.2.1994 and this error is liable to be rectified.

B) That the plaintiffs/applicants were dispossessed from the land in question by the defendants illegally and forcibly, when the application for issuance of the ad-interim injunction was dismissed on 10.07.2015 and as such the plaintiffs were dispossessed and now the applicants/plaintiffs claim the consequential relief of joint possession of the land.

C) That the applicants/plaintiffs incorporate paragraph no.8(a) to be a new paragraph in the averments of the plaint and the proposed paragraph no.8(a) is reproduced below:-

Para no.8(a) that the land mentioned in the heading of the plaint is the joint Hindu family property and the same is coparcenary property, situated in village Dastool Sahib Wala, Tehsil and District Ferozepur. No family settlement had taken place at any point of time as stated in the impugned judgment and decree and as such the alleged family settlement is illegal, null and void and finds no mention in the revenue records and as such it fortify the contention that the defendants committed fraud and obtained the alleged judgment and decree by misleading the said Hon'ble Court. The alleged general

attorney Rattan Singh son of Surain Singh did not appear in the Court of Sh. B.R.Garg, Sub-Judge Ferozepur nor filed any written statement, but one Harbans Singh had appeared in the said case and this important aspect of the case goes to the root of the case and Rattan Singh was an educated person and used to sign in ordinary course on the various papers, but on 4.1.1994 some other person appeared as Rattan Singh, who thumb marked the statement in the said Court and it is clear cut case of impersonation. The alleged power of attorney dated 9.4.1992 was registered in a perfunctory manner propounded by Rattan Singh son of Surain Singh son of Bagga Singh and the recitals of the abovesaid power of attorney are false and without any basis and the filing of the power of attorney by Sh. Kulwinder Singh, Advocate, Ferozepur on behalf of Rattan Singh son of Bagga Singh is highly suspicious and cannot be relied upon.

D) That similarly in the relief clause of the plaint the words with consequential relief of joint possession of the land mentioned in the heading of the plaint.”

The aforementioned amendment will change the nature and character of the suit, much less tantamounts to withdrawing the admission which is not permissible in law as valuable right had accrued in favour of

the petitioners. There is no explanation of expression “*despite exercise of due diligence*” which has been incorporated in the Code of Civil Procedure vide amendment of 2002. All these facts have not been taken into consideration by the Court below, therefore, there is illegality and perversity in the order under challenge.

I have heard the learned counsel for the petitioner-defendants and appraised the paper book.

The aforementioned amendment sought to be incorporated can be rebutted by filing a written statement and by leading an evidence. Though the decree is of the year 1993 and not of 1994, much less the suit had been filed in the year 2013, in my view, the petitioners have all possible objections in armoury and defend the suit on merits but not in the manner and mode as indicated above.

In view of what has been observed above, I am of the opinion that there is no illegality and perversity in the order under challenge, much less the same cannot be said to have been passed without jurisdiction.

No ground is made out for interference in the impugned order.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 19, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No