

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.6152 of 2013

Date of Decision.27.03.2018

Rattan Lal

.....Petitioner

Vs

Ram Sawroop and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

None for respondent No.1.

Mr. Jaspal Singh, Advocate
for respondent Nos.2 to 4.

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AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 7.9.2013 (Annexure P-5) whereby the application for amendment of the plaint during plaintiff's evidence has been rejected.

Mr. G.C. Shahpuri, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff has filed the suit claiming declaration to the effect that the plaintiff is in exclusive possession of land measuring 2 $\frac{3}{4}$ marlas of land measuring 11 kanals marked by letters ABCD shown in the site plan being part of khasra No.134 situated at village Dhaurang, Hadbast No.488, Tehsil Jagadhari, District Yamuna Nagar and consequential relief of permanent injunction restraining the defendants from interfering in any manner whatsoever in the actual physical possession of the plaintiff over the land and further restraining them from raising any sort of construction thereon, alienation, mortgage, lease etc. In para 3 of the plaint, it was specifically pleaded that in the year 1987, a family settlement

was arrived at between the parties and in family settlement, the land fully shown in the site plan and described in the head note of the plaint fell to the share of the plaintiff and the possession of the same was handed over to him by defendant No.1 and the remaining land of khasra No.134 fell to the share of defendant No.2 to 4. Despite family settlement, the parties did not change the ownership of the land in dispute in the revenue record and kept on postponing the manner and when realized that intention of the defendants turn dishonest, the suit aforementioned was filed.

Defendants No.1 to 4 contested the suit by denying that any family settlement in the year 1987 was arrived at between the parties. All other averments in the plaint were also denied and an additional plea was taken that the defendant No.1 was exclusive owner in possession of the suit property as it was purchased vide sale deed dated 14.10.1974 and plaintiff and defendant No.1 were minors at that time. In other words, it was averred that defendant No.1 had purchased the property out of his own income, therefore, the defendant No.1 was/is the exclusive owner in possession of the same. The plaintiff had stated that there was an oral settlement but during the proceedings, the plaintiff filed a compromise which was vague, indefinite and not registered, therefore, could not be admissible in evidence. Even otherwise, defendants did not admit the alleged compromise and denied the same.

Since the matter was pending for the evidence of the plaintiff, an application dated 3.10.2012 (Annexure P-3) for amendment of the plaint was submitted realizing that there was some inadvertent mistake in the pleadings and wanted to incorporate para 3(2) by stating that oral family settlement arrived at in the year 1987 which had already been acted upon by

the parties and was reduced into writing in the year 1990. On the basis of written compromise, the suit titled as “Rattan Lal Vs. Ram Swroop and others” filed by the plaintiff, was dismissed as withdrawn in the year 1990 at Ambala.

The aforementioned application was contested by the defendant taking the plea that it will tantamount to filling up the lacuna by pleading a new case.

Mr. G.C. Shahpuri, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the amendment sought to be incorporated is most innocuous and elaborative in nature and in respect of oral settlement, it has been stated that it was reduced into writing and on the basis of the same, the suit aforementioned was dismissed as withdrawn, which would be of course subject of proof during the evidence. The defendant will also get opportunity to cross-examine the plaintiff with regard to same, therefore, no prejudice and harm would be caused to the defendant in allowing the amendment.

Per contra, Mr. Jaspal Singh, learned counsel appearing on behalf of the respondent No.2 to 4 submitted that the impugned order is legal, fair and just and does not call for interference as the amendment cannot be allowed to be incorporated after the trial had commenced, much less, there is no compliance of the expression “despite due diligence”, therefore, amendment was an afterthought, which tantamount to withdrawal of the admission and changing the nature of the suit, which is not the scope of Order 6 Rule 17 CPC.

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

Shahpuri, for, the amendment as sought to be incorporated is elaborative in nature and would help the Court in adjudication of the *lis*. It does not alter the nature and character of the suit and stand of the plaintiff. Moreover, the amended pleadings shall always be subject of proof at the time of evidence and the defendants would also get an opportunity of cross-examination. In my view, it will not fall within the realm of withdrawing of admission taking away some valuable right allegedly accrued in favour of the defendants. This fact has not been noticed by the trial Court, therefore, there is fallacy and perversity in the order under challenge. Accordingly, the same is hereby set aside.

However, since the plaintiff had not been able to give explanation of despite exercising of due diligence, I intend to impose costs of ₹10,000/- to be paid to the counsel appearing for respondent No.2 to 4 in the High Court.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

March 27, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No