

(114) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5882 of 2018
Date of decision:15.10.2018

M/s Bhullar and Gill Rice Mills and another

.... Petitioners

Versus

Amrik Singh and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. G.S. Sirpikhi, Advocate for the petitioners.
Mr. Prabhdeep Singh Dhanju, Advocate for respondent No.1.

B.S. Walia, J. (Oral)

[1] Challenge in the revision petition is to order dated 07.08.2018 (Annexure P5) passed by the learned Civil Judge (Jr. Division), Batala dismissing the application filed by the petitioners for amendment of the plaint to incorporate the factum of respondent No.1 Amrik Singh having sold property more than the property purchased by him from respondent No.2 and in respect of which civil suit filed by the petitioners had been decreed in the year 1999 holding that 3 kanals 16 marlas of land sold by respondent No.2 to the petitioners was prior in time to 4 kanals 4 marlas of land sold by respondent No.2 to respondent No.1 in the year 1989.

[2] Brief facts of the case leading to the filing of the instant Revision Petition are that one Avtar Singh who was owner of 16 kanals of land sold half of aforesaid land to respondent No.1 and half to respondent No.2. Thereafter, respondent No.2 executed sale deed in favour of the

petitioners/plaintiffs on 30.11.1987 selling 3 kanals 16 marlas of land out of the 8 kanals of land purchased by him from Avtar Singh. Subsequently, respondent No.2 also executed sale deed in favour of respondent No.1 qua 4 kanals 4 marlas of land on 26.12.1989 out of the land remaining out of total land purchased by him from Avtar Singh. Prior to the sale of land by respondent No.2 to the petitioners and respondent No.1, respondent No.2 had executed an agreement to sell on 08.07.1983 in favour of one Amolak qua 4 kanals of land out of the land purchased by him from Avtar Singh. Civil suit filed by the LRs of Amolak Singh was decreed on 26.03.1992. Although petitioners had purchased 3 kanals 16 marlas of land from respondent No.2 prior in time to the land sold by respondent No.2 to respondent No.1, yet mutation could not be got sanctioned by the petitioners. Consequently, petitioners filed a civil suit in the year 1996 against respondent No.1, respondent No.2 as well as the LRs of Amolak Singh for declaration that they were owner in possession of 3 kanals 16 marlas of land on the basis of sale deed executed by respondent No.2 in their favour in 1987. The aforementioned civil suit was decreed on 07.08.1999 holding the petitioners to be having prior rights than respondent No.1 in the land sold by respondent No.2 since the sale of 3 kanals 16 marlas of land by respondent No.2 to the petitioners was prior in time to the sale of 4 kanals of land by respondent No.2 to respondent No.1. Thereafter, the petitioners filed a suit for partition against respondent Nos.1 and 2, LRs of Amolak Singh as well as the vendees who had been sold land by respondent No.1 after the passing of decree by the Civil Court on 07.08.1999 in favour of the petitioners taking up the plea in paragraph No.9 of the plaint that respondents/defendants had sold almost their entire share in the land in suit and for which various mutations had been sanctioned qua the various sales made by the

respondents/defendants and that although as per Jamabandi, the respondents/defendants were co-sharer yet it appeared that they had sold their entire share to other persons rather more than their due share. Parties led their evidence. Thereafter, the case was fixed for rebuttal and arguments. At that stage the petitioners/plaintiffs moved an application for amendment (Annexure P-3) for adding paragraph No.8-A that after the judgment passed by the Court of Smt. Ramesh Kumari, Civil Judge, Batala on 17.08.1999 (as has been referred to in paragraph No.8 of the original plaint), respondent No.1 had made various sales knowing fully about the fact that he had got no right, title or interest in the land but he had intentionally and wilfully made the sale to various persons to debar the plaintiff from its legal right. The aforementioned application was dismissed by the learned Civil Judge (Jr. Division), Batala vide order dated 07.08.2018 (Annexure P-5) by holding that serious prejudice would be caused to the respondents as entire evidence had already been led by the parties and application had been filed at a belated stage, besides, nothing had been mentioned in the application that despite due diligence, the matter could not be raised before the commencement of the trial.

[3] Learned counsel for the petitioners has relied upon the decision of Hon'ble the Supreme Court in **Surinder Kumar Sharma v. Makhan Singh 2009 (10) SCC 626** to contend that delay in itself is no ground to deny amendment prayed for and that the question which is of prime importance is as to whether by allowing the amendment, the real controversy between the parties can be resolved and secondly, that no prejudice would be caused to the respondents since evidence had already been led by the parties in the context of judgment dated 07.08.1999 in favour of the petitioners

which reflected the sales made by the respondents after the passing of the judgment and decree dated 07.08.1999 and the petitioners merely wanted to incorporate that respondent No.1 had made the sale to the vendees who were already on record as respondents after the judgment and decree dated 07.08.1999. Thereby no change whatsoever would be caused in the nature of the suit rather the same would go to effectively decide the matter in dispute.

[4] Learned counsel for the respondents on the other hand has placed reliance on judgment of this Court in **Khushi Ram v. Murli Manohar Thatheran Panchayati Mandir and Dharamsala Society, 2010 (1) RCR (Civil) 967** to contend that in the absence of establishment of due diligence, prayer for amendment can not be allowed.

[5] I have considered the submissions of learned counsel for the parties and am of the considered view that in the light of the position as noted above, what is of paramount importance is whether the amendment prayed for would go to effectively resolve the controversy amongst the parties. If the answer to the same is in the affirmative, the application for amendment is to be allowed and delay, if any, can be compensated by payment of costs.

[6] Since, it is not in dispute that a judgment and decree dated 07.08.1999 was passed in favour of the petitioners and against respondent Nos.1 and 2 as also the LRs of deceased Amolak Singh holding that 3 kanals 16 marals of land sold by respondent No.2 to the petitioners was prior in time to the land sold by respondent No.2 to respondent No.1 and the judgment and decree dated 07.08.1999 as also the vendees to whom respondent No.1 had sold the land in excess of the land sold to him by

would be caused to the respondents if the amendment proposed to be made is allowed by suitably compensating the contesting respondent No.1 with costs on account of delay in moving the application.

[7] Accordingly, the Civil Revision is allowed. Impugned order dated 07.08.2018 (Annexure P5) passed by the learned Civil Judge (Jr. Division), Batala is set aside and the application for amendment is allowed subject to payment of costs of ₹ 15,000/- by the petitioners to contesting respondent No.1. Needless to mention that the learned trial Court will give opportunity in respect thereto to the respondents in accordance with law and would proceed to decide the suit as expeditiously as possible, preferably within a period of six months.

(B.S. Walia)
Judge

15.10.2018
amit

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No