

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

C.R. No.6468 of 2015

Date of Decision.28.02.2018

Joginder Singh Wahlla

.....Petitioner

Vs

Balwinder Singh Wahlla and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Gupta, Advocate and
Mr. Karan Gupta, Advocate
for the petitioner.

Mr. Hargobinder Singh, Advocate
for respondent No.1 and 2.

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AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application for amendment of the plaint under order 6 Rule 17 CPC by correcting particulars of plaintiff No.1 and adding the words “and is also result of fraud, undue influence etc.” after the words null and void in the heading of the plaint and in para 3 of the plaint “that the suit land as fully detailed in the heading of the plaint is the self-acquired property of the defendant No.1 but as the defendant No.1 never intended to transfer any property in the name of defendants No.2 and 3, the said transfer deed is result of fraud, as such, the plaintiffs have 1/6th share each in the suit land” and as well as adding paras 3-A, 3-B, 3-C, 3-D and 3-E, has been declined by the trial Court.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiffs are none else but son and daughters of Bishan Singh son of Nand Singh whereas defendant Nos.2 and

3 are other sons of Bishan Singh and defendant No.1 is the son of Nand Singh. The challenge in the suit has been made to the Transfer Deed dated 6.8.2010 executed by defendant No.1 in favour of defendant No.2 and 3 in respect of land mentioned in the head note of the plaint and as well as for declaration that they are in possession of the agricultural land measuring 18 bighas 16 biswas with permanent injunction restraining the defendants No.2 and 3 from selling, alienating or encumbering the suit land.

Defendants filed the written statement. The issues were framed and the case was listed for evidence. The amendment sought to be incorporated vide application is clarificatory and explanatory in nature and would not affect the rights of the parties as both the parties would be given opportunity to lead evidence in support of their respective pleadings, therefore, the application can be allowed subject to terms and condition, which this Court may deem fit.

Mr. Hargobinder Singh, learned counsel appearing on behalf of the respondents-defendants submitted that the application was not maintainable as the plea taken by the plaintiff in para Nos.4 to 6 is an attempt to bring forth new facts which were not pleaded in the suit. The plaintiff admitted the suit property to be ancestral and joint coparcenary property and governed by the Hindu Law in the matter of succession. Therefore, now the plaintiff cannot wriggle out of the same and volte-face by clothing the nature of the property as self-acquired by defendant No.1. The issues in the aforementioned case have been framed on 06.02.2012 whereas the application is dated 09.04.2012 which was decided on 02.09.2015 owing to the fact that there was a stay of further proceedings, therefore, the suit had not made any headway, thus, urges this Court for

dismissal of the revision petition on the ground that the provisions of Order 6 Rule 17 CPC have not been complied with, as there had been no expression of “despite exercise of due diligence”.

I have heard learned counsel for the parties and appraised the paper book. The facts regarding filing of the suit, written statement and framing of the issues are not in dispute. The only thing which has to be examined is whether the amendment sought in the plaint at the stage when the plaintiff is yet to lead evidence can be ordered or not. Though the petitioner alleged that the property was ancestral and coparcenary but now sought to plead that the same is self-acquired and other paras sought to be added as clarificatory in nature, however, it would not help either of the parties, unless and until a direct and cogent evidence is brought on record to prove the nature and character of the property.

As regards the ingredients of fraud, the plaintiff is required to prove the same as per the provisions of Order 6 Rule 4 CPC with liberty to rebut the same by the defendants. Had these facts been looked into by the trial Court, perhaps the application would have been allowed. Be that as it may. I do not deem it appropriate to comment on the same as it would have serious repercussions on the merit and demerits of the respective stands of the parties.

Keeping in view the aforementioned, I am of the view that the order under challenge is not sustainable in the eyes of law and the same is hereby set aside. The revision petition is allowed subject to payment of costs of ₹10,000/- to be paid to the counsel appearing for the respondents-defendants in the High Court. The petitioner plaintiff is directed to present the amended plaint within a period of 15 days and the amended written

statement shall be filed by the defendants in another 15 days thereafter.

The trial Court shall make an endeavour to dispose of the suit as expeditiously as possible.

(AMIT RAWAL)
JUDGE

February 28, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No