

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

CR-6557-2015

Decided on: 20.02.2018

Mohinder Singh and others

.... Petitioners

Versus

Bohti Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. J.S. Bedi, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate,
for respondents No.1 to 8.

KULDIP SINGH, J (ORAL)

Impugned in the present revision is the order dated 14.09.2015 (Annexure P-7) passed by learned Civil Judge (Jr. Division), Gulha vide which an application filed by the plaintiff-petitioner under Order I Rule 10 read with Order VI Rule 17 CPC, so as to plead one Ram Rattan as defendant and also challenged the gift deed dated 31.05.2010 executed by Santosh Rani in favour of said Ram Rattan. The case is at the stage of rebuttal and arguments.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Perusal of the file shows that the suit was instituted in the year 2011. Both the parties led their evidence and the case was at the stage of rebuttal and the arguments when the present application was filed. It was stated in the application that while preparing the arguments, it was noticed that Santosh Rani wife of Ram Kumar has executed a gift deed dated

31.05.2010 in favour of her brother-in-law regarding which mutation No.11921 has also been sanctioned and entered. The defendants had taken objections regarding non joinder of necessary parties in the written statement, but they had not disclosed as to which necessary party has not been joined. Therefore, said defendant-Ram Rattan is also necessary party and gift deed is required to be challenged.

The Lower Court dismissed the application on the ground that it was filed at a belated stage. It also noticed that defendant No.9 who had taken the objection regarding non-joinder as necessary party, has simply denied all the averments made in the plaint and is colluding with the plaintiff. Plaintiff had filed the suit on the basis of jamabandi for the year 2005-06 and it is not shown when the jamabandi for the year 2010-11 in which the entry regarding the said gift deed is incorporated, was published and came to the notice of the plaintiff.

I am of the view that since the reference to the gift deed was made in the jamabandi for the year 2010-11 and the plaintiff has not produced any prima facie document to show that it was published much later, as sought to be projected before this Court, therefore, it cannot be said that the jamabandi did not come to the notice of the plaintiff during the pendency of the suit. From the year 2011 till 2018, the case was tried and when it was mature, the present application was filed. As per the amended provisions of Order VI Rule 17, a proviso has been added that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the present case, the plaintiff had failed to prove before the trial Court that

the matter regarding gift deed as incorporated in the jamabandi for the year 2010-11 came to his notice only in the year 2015 when the present application was filed, rather the plea in the application is that while preparing the arguments, it came to the notice of the counsel, which means that the fact regarding said gift deed was already on the file much before the counsel was preparing for the arguments. Therefore, in view of the said proviso of Order VI Rule 17, the application was rightly declined. There is no ground to interfere in the impugned order.

As such, the present revision petition is dismissed. However, the plaintiff shall always at liberty to file the application for withdrawal of the suit with permission of the Court to file fresh suit incorporating all the facts, which application, if filed, is to be decided by the trial Court on merits without being influenced by the observations of this Court.

(KULDIP SINGH)
JUDGE

20.02.2018

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes