

C.R. No.6642 of 2018

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

C.R. No.6642 of 2017

Date of Decision.02.02.2018

Mohan Singh

.....Petitioner

Vs

Gurdeep Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chandeeep Singh, Advocate
for the petitioners.

-:-

AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application of the defendant for bringing on record the additional affidavit as some pleadings which have already been incorporated in para 2 of the written statement were inadvertently omitted, has been allowed.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted that the aforementioned piece of evidence was never pleaded in the written statement, though a reference was to the entire electric connection but not a half share, therefore, such evidence would be beyond pleading and is not permissible in law. In support of his contention relies upon the judgment of the Hon'ble Supreme Court in **Vidyabai and others Vs. Padmalatha and another 2009(1) RCR (Civil) 763** and **Ajendraprasadji N. Pande and another Vs. Swami Keshvapraakeshdasji N. and others 2007(1) RCR (Civil) 481.**

I have heard learned counsel for the petitioner and appraised the paper book. Para 8 of the preliminary objection and para 2 of the

written statement on merits reads as under:-

“8. That the answering defendants purchased the land measuring 42K-17M as fully described in the sale deed dt. 8.4.2010 registered on 9.4.2010 from the defendant No.1 for valuable consideration to the tune of Rs.55,25,000/- and the sale deed to this effect has been executed on 8.4.2010 registered on 9.4.2010 and the defendant No.1 delivered the possession of entire Khasra Nos.60//12/2, 19, 22/1/2, 22/2 and on the western side of Khasra Nos.60//8/2, 13, 18, 23 to the answering defendants at the time of execution and registration of above said sale deed previously the plaintiff and defendant No.1 partitioned their property through oral partition long time ago and the defendant No.1 was in possession of the above said khasra numbers on the basis of said oral partition. The answering defendants are in peaceful possession of said purchased land measuring 42K-17M being its bonafide purchasers since 8-4-2010 and the plaintiff has no right, title, interest, concern or connection with the same.

Para 2 of written statement on merits.

2. That para No.2 of the plaint is incorrect and denied as stated. The allegations to the effect that the defendant has settled in Canada permanently and that plaintiff has constructed the house in Khasra No.60//18 about 40 years ago and also installed the electrical connection in the name of plaintiff bearing No.A-16AP and that after this plaintiff extended the load 5 to 10 BHP for using the same for irrigation of their land since the time of installation and that

plaintiff is paying the bill regularly to the department, all are totally false, wrong and hence denied.”

The additional affidavit now sought to be submitted reads as under:-

“2. That the deponent and defendant No.2 purchased the land measuring 42K-17M as fully scribed in the sale deed dt. 8.4.2010 registered on 9.4.2010 from the defendant No.1 for valuable consideration to the tune of Rs.55,25,000/- and the sale deed to this effect has been executed on 8.4.2010 registered on 9.4.2010 and defendant No.1 delivered the possession of entire Khasra Nos.60//12/2, 19, 22/1/2, 22/2 and on the western side of Khasra No.60//8/2, 13, 18, 23 to the answering deponent and defendant No.2 at the time of execution and registration of above said sale deed. At the time of execution and registration of sale deed, ½ share in electric motor connection of 7.5 BHP, Bore Submersible, Kotha Connection, passage, Khata and ½ share in the residential house in question was given to the deponent and defendant No.2.”

On cumulative reading of the pith and substance of the written statement and the additional affidavit, it is in tandem with the written statement except expression “½ share in electric motor connection” instead of entire share has been mentioned. In my view, such piece of evidence can always be agitated by the petitioners and seen by the trial Court at the time of arguments. Such technicality should not come in the way of the respondents-defendants, as the petitioners-plaintiffs have not been able to

make out a case as to how it is going to affect their case as it is only a pleading which has to be seen in conjunction with the documentary evidence.

There is no dispute to the ratio decidendi referred to by the counsel for the petitioners-plaintiffs but facts and circumstances of each case has to be looked into.

In view of the observations made above, while upholding the order under challenge, the revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 02, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No