IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6715-2017 (O&M)
Date of decision : 8.3.2018

Balwinder Singh ..... **Petitioner**

Versus

Paramjit Kaur and another ..... **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.D. Bawa, Advocate for the petitioner.

Mr. Sandeep Arora, Advocate for respondent No. 1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Respondent-defendant No. 2 already ex-parte before the learned trial Court.

Impugned in the present revision petition is the order dated 22.8.2017 (Annexure P-10) passed by learned Additional District Judge, Gurdaspur, whereby in the pending civil appeal, an application filed by the petitioner under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for amendment of the plaint was dismissed.

Heard.

It comes out that plaintiff has filed a suit for permanent injunction for restraining the defendants-respondents from illegally and forcibly interfering in his exclusive possession over the suit property. He

Preeti
2018.03.15 14:36
I attest to the accuracy and
integrity of this document
Chandigarh

has claimed that in the partition between grandfather-Dalip Singh and Mohinder Singh, half portion of the property towards Northern side fell to the share of Dalip Singh and portion towards Southern side fell to the share of Mohinder Singh. After the death of Mohinder Singh, suit property was purchased by defendant-respondent No.-1 Paramjit Kaur through Bawa Singh and he has become the owner in exclusive possession of the property belonging to Mohinder Singh i.e., the one half share in the suit property. The suit was dismissed on 30.11.2012 by learned Civil Judge, (Junior Division), Batala.

During the pendency of the appeal, an amendment was sought to be made to contend that Mohinder Singh had executed a mortgage deed in favour of Moola Singh son of Hari Singh and that sale of mortgagee rights by Moola Singh in favour of Dalip Singh were executed.

Learned trial Court has taken a view that allowing the amendment will start *de novo* trial. The provisions under Order VI Rule 17 of the Code of Civil Procedure 1908 were amended by way of amendment in the year 2002. The amended provisions are reproduced as under: -

> **"17. Amendment of Pleadings.-** the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided 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."

The proviso to the said Rule shows that no application for amendment shall be allowed after the trial has commenced unless the Court

Preeti
2018.03.15 14:36
I attest to the accuracy and
integrity of this document
Chandigarh

comes to the conclusion that despite the due diligence, the parties could not raise the matter before the commencement of the trial.

In this case, plaintiff-petitioner wants to allege a mortgage deed and sale of the mortgagee rights by Moola Singh in favour of Dalip Singh his grandfather. The said facts are presumed to be within the knowledge of the plaintiff when he filed a suit claiming the rights of the property.

Moreover, it is simple suit for injunction in which plaintiff is merely required to prove his possession over the disputed property which may be legal or illegal.

It comes out that the civil suit was filed in the year 2008 and decided in the year 2012.

Learned counsel for the petitioner relies upon two authorities of the Hon'ble Apex Court titled as ***Mahila Ramkali Devi and others versus Nandram (D) through LRs and others***, ***2015 (5) RCR (Civil) 562*** and ***Prithi Pal Singh and another versus Amrik Singh and others, 2014 (1) RCR (Civil) 327***. A perusal of the said authorities show that these are on the different footings. In the said cases, regular second appeal was also decided and in the special leave to appeal before the Apex Court along with merits of the judgments passed by learned trial Court question regarding amendment was also raised and it was held that amendment was rightly allowed. The said suits were regarding declaration; possession and apprehension which stands on different footings.

In the present civil revision, suit is for simple injunction in which plaintiff is required to prove his possession.

I am of the view that the lower Appellate Court has rightly

Preeti
2018.03.15 14:36
I attest to the accuracy and
integrity of this document
Chandigarh

concluded that if such amendment is allowed, it will start a *de novo* trial of the case. The plaintiff has already failed to prove his possession before the learned trial Court and it appears that he want to fill up the lacuna in his case by way of seeking amendment and than leading evidence after the amendment.

No ground to interfere in the impugned order dated 22.8.2017 (Annexure P-10) passed by learned Additional District Judge, Gurdaspur is made out.

Dismissed.

Since the main petition has been dismissed, the miscellaneous application, if any, also stands dismissed.

(KULDIP SINGH)
JUDGE

8.3.2018
preeti

Whether speaking / reasoned Yes
Whether Reportable: No

Preeti
2018.03.15 14:36
I attest to the accuracy and
integrity of this document
Chandigarh