

CR No.7162 of 2013

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

CR No.7162 of 2013

Date of decision:31.05.2018

Bahadur Singh

... Petitioner

Vs.

Hardial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Gautam, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondents

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 27.08.2013 (Annexure P-16), whereby, the application submitted by the LRs of petitioner for amendment of the plaint for incorporating certain paragraph laying challenge to the sale deeds as well as impleadment of the subsequent vendees, had been dismissed.

The petitioner-plaintiff instituted the suit in the year 2004 claiming declaration to be owner of the suit property and as well as possession of the agricultural land by challenging the sale deed dated 14.11.1994 executed by her in favour of defendant No.1 and for grant of perpetual injunction on the grounds stated therein.

The respondent-defendant No.1 filed the written statement in

the year 2004 by taking the plea that subject matter of the suit land had been sold in the year 1998.

During the pendency of the suit, the application was submitted by the petitioner for disclosing the particulars of the sale deed for the purpose of impleadment of subsequent vendees and as well as challenge to the sale deeds. The aforementioned particulars were disclosed in the year 2006, i.e. on 17.03.2006. However, the application for amendment was submitted in the year 2012 by laying challenge to the sale deed dated 19.3.1998 and another sale deed dated 03.07.2006 executed by defendant No.1 in favour of vendees during the pendency of the suit but the same has been dismissed.

Mr. Namit Gautam, learned counsel for the petitioner submits that plaintiff-Surjit Kaur was very old at the time of filing of suit. However, defendants did not disclose the particulars of the sale deeds necessitating the plaintiff to move an application for disclosing the particulars. As noticed above, the particulars were disclosed only on 17.03.2006 but few days thereafter, plaintiff-Surjit Kaur died on 08.04.2006 and an application was submitted for bringing on record her legal representatives on 01.05.2006 (Annexure P-6) which was allowed, vide order dated 17.01.2007. Thereafter, another application was submitted by one Malkiat Singh claiming to be LR of Surjit Kaur which was allowed by the trial Court on 29.02.2012 and during all this period, no occasion arose for the plaintiff to move an application for amendment, therefore, challenge to the sale deeds sought to be incorporated by way of amendment cannot be said to be barred

by law of limitation. At the best, the Court below could frame the issue vis-a-vis limitation by permitting the respondent-defendants to rebut the same by leading evidence. The question of limitation can always be left open and decided at an appropriate stage, for, this fact was not in the knowledge of the plaintiff while filing the suit as jamabandi did not reflect the aforementioned two sale deeds.

Per contra, Mr. Ajaivir Singh, learned counsel for the respondents submits that amendment sought to be incorporated is barred by law of limitation and cannot be permitted. The application could have been filed in the year 2006 when the factum of sale deed of 1998 was disclosed in the written statement of 2004 but does not dispute the factum of death of Surjit Kaur and impleadment of her LRs. He further submits that the entire pith and substance of the suit would be altered. If at all, the plaintiff has any grievance, can file separate suit but not in the manner and mode as indicated above and thus, prays for dismissal of the revision petition with exemplary costs.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gautam.

As a matter of record, the factum of disclosure of sale deed on 17.03.2006, death of Surjit Kaur on 08.04.2006, impleadment of her LRs on 17.01.2007, allowing of another application on 29.02.2012 have not been controverted by Mr. Ajaivir Singh, Advocate.

In such circumstances, I am of the view that plaintiff was prevented to move an application for amendment owing to occurrence of events as referred to above. The Court below should have adopted the pragmatic approach in allowing the application subject to filing of objections by the defendants as both the parties would have been at liberty to lead evidence. The application for amendment reflected the challenge to the sale deeds dated 19.03.1998 and 03.07.2006 and as well as impleadment of subsequent vendees and it would have affect on adjudication of the suit in the absence of relief sought to be incorporated.

As an upshot of my findings, the impugned order dated 27.08.2013 (Annexure P-16) suffers from infirmity, illegality and perversity, much less without jurisdiction. The impugned order is hereby set aside and the application for amendment is allowed.

Consequently, the revision petition stands allowed.

The petitioner-plaintiff is permitted to cause the amendment in the plaint. The respondents are also at liberty to take all possible objections in the written statement and press for issue qua limitation.

(AMIT RAWAL)
JUDGE

May 31, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No