

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No.912 of 2017  
Date of decision:13.03.2018

M/s Malik Filling Station ... Petitioner

Vs.

Saroj Rani and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Kanwaljit Singh, Senior Advocate with  
Mr. Abhishek Bajaj, Advocate  
for the petitioner.

Mr. Gaurav Arora, Advocate  
for respondents No.1 and 2.

**AMIT RAWAL J.**

The present revision petition at the instance of the petitioner-defendant is directed against the impugned order dated 01.02.2017 (Annexure P-5), whereby, application for amendment of the written statement, was rejected.

The respondent-plaintiff instituted a suit claiming possession with consequential relief of permanent injunction on the premise that plaintiffs alongwith Poonam daughter of Vijay Kumar son of Dhani Ram were recorded to be owners in possession of *gair mumkin* land measuring 1 kanal 7 marlas. Dhani Ram common ancestor of plaintiffs died intestate and after his death, mutation of inheritance bearing no.639 pertaining to his other land comprised in khasra no.91 was entered and sanctioned in the name of his only son Vijay Kumar. However, in the revenue record, Sh. Dhani Ram son of Sh. Lachhman Dass was not recorded as owner of the suit

land, therefore, the revenue officials did not enter the suit land.

Vijay Kumar son of Dhani Ram, husband of plaintiff no.1, father of plaintiff no.2 and Poonam died intestate on 30.11.2011 and the plaintiffs contacted the Patwari Halqa for getting the mutation of inheritance of deceased Vijay Kumar entered and sanctioned in their names. Though the mutation bearing no.2459 was entered in the name of plaintiffs and Poonam qua khasra no.91 but it transpired that revenue officials due to clerical and copying mistakes entered the name of “Dhani Ram” as “Mani Ram” in the revenue record. The defendant by taking the undue advantage of wrong revenue entries as well as sudden demise of Vijay Kumar, husband of plaintiff no.1 and father of plaintiff no.2, forcibly and illegally occupied over the suit land.

The aforementioned suit was contested by the defendant by taking various preliminary objections qua maintainability and mis-joinder. It was stated that plaintiff, namely, Dhani Ram was joint owner in possession alongwith his brother Piara Chand and Prem Chand sons of Lachhman Dass of the land measuring 3 kanals 3 marlas comprised in khasra no.91 and were in possession of land measuring 1 kanal 7 marlas comprised in khasra no.92. There was an oral partition and after that Dhani Ram died. Owing to demise of Vijay Kumar, predecessor in interest of the plaintiff had also inherited the separate portion in both khasra numbers and therefore, the suit was not maintainable. In fact, Vijay Kumar had sold the land vide various sale deeds described in the written statement.

During the pendency of the suit, i.e. at the final stage, petitioner-defendant moved an application under Order 6 Rule 17 CPC for

amendment of the written statement to incorporate following new paragraph 10 of the preliminary objections which reads thus:-

*“10. That the defendant is bonafide purchasers for valuable consideration without any dispute from any corner, after taking reasonable care to ascertain that the transferor had power to make the transfer and obtained the possession as owner thereof without any interference from any corner. Shri Rajiv Khurana, the sole proprietor of the defendant's firm has purchased the property in dispute vide registered sale deed No.1093/1 dated 06.11.1991 and Shri Amrit Lal son of Shri Ram Lal son of Jai Gopal have purchased the part of the property in dispute vide registered sale deed No.1097/1 dated 6.11.1991 for valuable consideration. The vendor were already in possession of the property as owners thereof and the petrol pump was already in existence, as such the defendant have purchased the property in dispute for valuable consideration without any knowledge of any dispute from any corner and are in possession till date as owners thereof being bonafide purchaser for valuable consideration.”*

It was averred in application that amendment was necessary and important to be incorporated. The said application was contested and the trial Court dismissed the application.

Mr. Kanwaljit Singh, learned Senior counsel assisted by Mr. Abhishek Bajaj, Advocate appearing on behalf of the petitioner submitted that at the time of notice of motion, the petitioner-defendant

confined the proposed amendment to be incorporated without taking further opportunity to adduce any evidence. In this regard, he has drawn the attention of this Court to the order dated 08.02.2017. He submitted that the evidence with regard to proposed amendment had already come on record, therefore, no harm and prejudice would be caused to the respondent-plaintiffs, in case the application for amendment is allowed, much less, it will not alter or change the stand or tantamounts to take away the right of the plaintiffs but the trial Court has committed illegality and perversity in rejecting the application. He further submitted that the trial Court has not looked into the fact that it has become necessary to complete the pleadings. In case, the aforementioned pleadings are not taken into consideration, the evidence already brought on record and arguments would not be appreciated by the trial Court.

Per contra, Gaurav Arora, learned counsel appearing on behalf of respondents No.1 and 2 submitted that fact of amendment as indicated above was in the knowledge of the petitioner-defendant but no explanation has come forth in moving the application at the final stage. There is no compliance of the expression "*despite exercise of due diligence*", rightly so the application has been dismissed. The suit had already reached at the stage of arguments when the application was filed and therefore, allowing of the application tantamounts to de-novo trial which is not permissible in law and thus, urged this Court for upholding the order under challenge by dismissing the revision petition.

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. Kanwaljit Singh.

The amendment sought to be incorporated as extracted above, in my view, is most innocuous and bonafide error on the part of the petitioner-defendant for having not taken at an appropriate time. Since Mr. Kanwaljit Singh, learned Senior counsel on instructions from his client submitted that defendant would not lead further evidence, I am of the view that it will not delay the adjudication of the suit. The trial Court, in my view, ought to have allowed the application for amendment by adopting the pragmatic approach as it would help in adjudicating the controversy between the parties to the lis.

Be that as it may, since the amendment appears to be necessary and proper for adjudication of the lis, particularly when defendant had given up the right to adduce fresh evidence, I am of the view that order under challenge is not sustainable and is hereby set aside. The application for amendment is allowed. The petitioner-defendant is permitted to file amended written statement within a period of 15 days from the receipt of a certified copy of this order and amended replication, if any, be filed one week thereafter. After that the trial Court shall be at liberty to decide the suit in accordance with law.

Resultantly, the revision petition stands allowed.

**(AMIT RAWAL)**  
**JUDGE**

**March 13, 2018**

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No