

CR-1131-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1131-2016 (O&M)

Date of decision : 15.01.2019

Jasbir Singh and others

... Petitioners

Versus

Sukhjinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Singla, Advocate
for the petitioners.

Mr. B.S. Bhalla, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the respondent No.1-plaintiff seeking amendment by incorporating the relief of recovery of an amount of ₹18,10,000/-, which was subject matter of the challenge, has been allowed.

Learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff instituted the suit seeking following prayer:-

"Suit for issuance of decree for declaration to the effect that plaintiff is Joint Owner in possession of land measuring 12 Kanals 1 Marla 1/12th share of 144 Kanal 16 marla out of land bearing khasra No.277//16 25, 278//20, 21, 279//1/1, 1/2, 1/3, 2/2/1, 9/2, 9/3, 10/1, 10/2, 10/3, 11/1, 11/2, 12/1, 12/2/1, 19/2, 20/1, 20/2, 280//5, 6, 7/3, 9/5, 12/1, 13/4, 14, 15, 16, 17, 18/1 Khewat No.253, now Khatoni No.329 as per jamabandi year 2008-09 situated in the area of village Khal Kalan Tehsil

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District Moga and the sale deed dated 2/11/12 bearing Wasika No.5922 executed by defendant No.3 in favour of defendant No.1 & 2 and sale deed dated 4.6.13 bearing WASIKA No.1952 executed by defendant No.1 and 2 in favour of defendant Nos.6 & 7 and subsequent mutations sanctioned on the basis of above said sale deeds are illegal null and void as it was just a paper transaction and it was without any consideration and are liable to be set aside.

Along with consequential relief of permanent injunction restraining the defendants or his agents from raising any sort of construction over the property or changing nature of property and also restraining defendant Nos.6 and 7 from further alienating the suit property to any one.

Or any other relief which this Hon'ble Court may deem fit and proper."

When the suit is slated for defendant's evidence, the respondent No.1-plaintiff submitted an application (Annexure P-2) to incorporate the following relief:-

"In the alternate suit for recovery of ₹18,10,000/- along with interest at the rate of 1% from the date of sale deed dated 02.11.2012 on the sale consideration from defendant No.3 in case sale deeds are not set aside."

He submitted that the aforesaid plea tantamounts to altering the nature of the suit as both the pleas are mutually destructive to each other, but the Court below has erroneously allowed the application as valuable right of the petitioners-defendants has been taken away.

Learned counsel for the respondent No.1-plaintiff supported the impugned order by submitting that the amendment is clarificatory in nature and it would not tantamount to change the nature of the suit, much less, it would help the Court for adjudication of the *lis*. The other party can always

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be compensated in terms of money as defendants can rebut the aforesaid relief by leading the evidence, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Singla, for, on perusal of the initial prayer and relief sought to be incorporated, in my view, both the pleas are mutually destructive to each other and it tantamounts to changing the nature of the case, for, once the plaintiff has challenged the sale deed, he cannot seek the recovery of amount, in the manner and mode, particularly when his evidence is already over. It tantamounts to fill up the lacuna as well.

Keeping in view the aforesaid facts, the impugned order, under challenge, is not sustainable in the eyes of law, much less, suffers from illegality and perversity and the same is hereby set aside. The present revision petition stands allowed.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**