

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1348 of 2014

Date of Decision: 20.02.2019

Kuldeep Singh

...Petitioner

versus

Rajinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. HPS Ghuman, Advocate,
for the petitioner.

Mr. G. S. Nagra, Advocate,
for the respondent.

Amol Rattan Singh, J.

By this petition, the petitioner challenges the order dated 28.01.2014 passed by the learned Civil Judge (Junior Division), Nabha, by which that court has allowed the application of the respondent (plaintiff in the suit before that court), filed under Order 6 Rule 17 of the Code of Civil Procedure, (read with Section 26 of the Specific Relief Act, 1963), seeking amendment of his plaint.

2. The suit filed by the respondent is one seeking a decree of possession of the suit property by way of specific performance of an agreement of sale stated to have been entered into the parties on 01.03.2007, with the application seeking amendment of the plaint and a part of the agreement, having been filed on 09.12.2011 (copy Annexure P-2 with the petition). A perusal of the said application shows that the amendment sought by the respondent was that in the agreement of sale itself a wrong *khasra* number had been given (describing the suit land), which as per the application, was due to

“an inadvertent view taken by the *Patwari* while preparing copy of *jamabandi*

for the year 2003”.

Thus, it was contended that the *khasra* number having been wrongly written in the revenue record, the same was copied by the deed writer in the agreement, leading to therefore the plaint also containing the wrong *khasra* number (as per the respondent-plaintiff).

It is further stated in the application that when the *jamabandi* (record of rights) for the year 2003 was compared with the subsequent *jamabandi* for the year 2008-09, the difference in *khasra* numbers came to light, which as per the respondent was a clerical mistake, and that he had thereafter consulted the *Patwari*, with the correct *khasra* numbers then having come to his knowledge.

Thus, he sought the correction of the *khasra* numbers in the instrument itself, i.e. the agreement of sale, as also in the plaint accordingly, vide the application that has been allowed vide the impugned order.

3. A perusal of the said order shows that after noticing the aforesaid contentions/pleadings in the application and the reply filed by the present petitioner (defendant in the suit), it was seen that he had stated that the suit itself was based on a forged and fabricated agreement, which actually the present petitioner had never executed (as per his stand), he further stating that even the *jamabandi* and *khasra girdawari*, i.e. the record of rights and the annual record, were forged by the plaintiff in connivance with the *Halqa Patwari*.

Thus, as per the petitioner in his reply to the application filed by the respondent before the trial court, the proposed amendment could not be allowed as it would also change the nature of the case, thereby prejudicing him.

4. After considering the contentions of both sides, the learned Civil Judge recorded that a perusal of the agreement dated 01.03.2007 showed that it contained *khasra* numbers as per the *jamabandi* for the year 2003-04, which was issued on 26.02.2007.

In the said *jamabandi*, it was recorded that vide Mutation no.759, the petitioner (Kuldeep Singh son of Charan Singh) became the owner of a 206th share out of a 1697th share in the suit property.

It was further recorded by that court that in fact in the said *jamabandi* the *khasra* numbers and respective areas of the *khasra* numbers were not written in a sequence, because before some *khasra* numbers no area was mentioned and before others it had been mentioned twice.

It was further recorded that the area of *khasra* no.295 was shown to be “Nil”.

Hence, it was held that there was every possibility that the petition writer who had scribed the agreement of sale, had written the wrong *khasra* numbers, showing an incorrect area, with the plaintiff (respondent herein) also having placed on record a *jamabandi* for the year 2008-09, and another *jamabandi* for the same year (2003-04), but issued on 01.07.2013. (As already noticed the *jamabandi* for that year as had been originally referred to, was issued on 26.02.2007 as recorded by the trial court in the earlier part of paragraph 5 of the impugned order).

5. Hence, holding that the previous *jamabandi* contained a “hotch-potch” of *khasra* numbers and the areas contained therein, it was further observed that the suit of the plaintiff being based on an agreement of sale dated 01.03.2007, in respect of property measuring 10 *bighas* and 6 *biswas*, as per the *jamabandi* for the year 2003-04, if the amendment sought was not

allowed to the petitioner, it would cause irreparable loss and injury to him.

6. Consequently, holding that Section 26 of the Specific Relief Act empowered the court to allow rectification in an instrument if that document did not express the real intention of the parties, the application of the respondent-plaintiff was allowed. While doing so, a judgment of the Supreme Court in Puran Ram v. Baguram 2008 (2) ACJ 40 was also cited by the learned trial court.

7. Before this court, Mr. Ghuman, learned counsel for the petitioner, submitted that the learned trial court has wholly erred in allowing the application of the respondent-plaintiff, in view of the fact that the suit was filed on 27.05.2008 with issues framed after a reply was filed by the petitioner, on 22.05.2009. Thereafter, the examination-in-chief of a witness for the respondent-plaintiff was also conducted on October 30, 2009, with the application in question however having been filed on December 09, 2011, i.e. more than two years thereafter. He therefore submitted that the application having been filed well after the trial had commenced, it could not have been allowed even in terms of the bar contained in the proviso to Rule 17 of Order VI of the CPC.

He submitted that there was no due diligence shown for a period of 3 years prior to the filing of the application and definitely not before framing of issues, the revenue record already being available at the relevant time.

Mr. Ghuman further submitted that though the learned trial court has relied upon the fact that the *jamabandi* for the year 2003-04 was corrected in the year 2013, as per Mr. Ghuman the said correction is also in collusion with the revenue authorities, even that correction not being available at the

time when the application seeking amendment was filed on 09.12.2011.

8. In support of his contention, Mr. Ghuman relied upon judgments of the Supreme Court in Vidyabai & Ors. v. Padmalatha & Anr.

2009 (1) RCR (Civil) 763 and Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chandigarh and others
2010 (14) SCC 596.

9. Mr. Nagra, learned counsel for the respondent-plaintiff on the other hand, reiterated the reasoning given by the trial court, to submit that once the revenue record itself had been corrected to show that the *jamabandi* for the year 2003-04 was incorrect, even if that correction was after the application under Order 6 Rule 17 had been made, the trial court did not err in allowing the application.

In support of his argument, Mr. Nagra relied upon the judgment referred to by the learned Civil Judge in *Puran Ram* (supra), as also another judgment of the Apex Court in Abdul Rehman and Anr. v. Mohd. Ruldu and Ors. 2012(4) RCR (Civil) 481.

10. Before considering the arguments, statutory provisions 'under which' the application was filed by the respondent herein, need to be reproduced.

Section 26 of the Specific Relief Act, 1963 and Rule 17 of Order VI of the Code of Civil Procedure are therefore reproduced hereinbelow:-

26. When instrument may be rectified.—(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

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Code of Civil Procedure

[17. **Amendment of pleadings**– The Court may at any stage of 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.]

11. Having considered the matter, though otherwise learned counsel for the respondent (now represented by his LRs), would be right to the extent that if there was an inherent error in the *jamabandi* for the year 2003-04, which had been corrected thereafter, an amendment could have been allowed even after the trial had started, because such amendment could not have been incorporated by the plaintiff even by due diligence, however, learned counsel for the petitioner-defendant has pointed out that in fact at the time when the application under Order 6 Rule 17 was filed, i.e. on 09.12.2011, even the *jamabandi*, i.e. revenue record had not been corrected. His contention, as already noticed, is that in fact it was subsequently corrected in (alleged) collusion with the revenue authorities and consequently, in any case such correction not being existent for a period of one and half years even after the application seeking amendment was made, the trial court could not have relied such a correction made thereafter, to allow the application well after the trial had commenced.

12. Of course, one way looking at the matter could be that a seemingly apparent error in the revenue record, and consequently the agreement of sale, could have been looked into by the trial court even thereafter in terms of Section 26 of the Act of 1963; yet, in my opinion, the application having been filed at a stage when no such correction on the revenue record was existent, it could not have been allowed at such a belated stage, two and half years after the issues were framed and more than 2 years and about one month after even the examination-in-chief of the plaintiffs' witness had been conducted.

Other than that, the agreement relied upon by the respondent-plaintiff being one dated 01.03.2007, the suit having been instituted on

27.05.2008 and the application having been filed on 09.12.2011, seeking a change in the *khasra* number in the agreement itself, without any evidence available to support such contention of a wrong *khasra* number entry till 01.07.2013, the trial court may have erred in allowing the application, in my opinion.

13. Having said that, it needs to be stated that whether or not there is an actual discrepancy in the revenue record qua the *khasra* numbers as are stated to be containing the suit land, would need to be determined by the trial court on the basis of the revenue record led in evidence by both parties and naturally, if in terms of the evidence led, there is seen to be a genuine error, as opposed to a “fabricated error”, it would naturally adjudicate upon the matter accordingly, at the time of disposal of the suit.

It is however made clear that this court is not making any comment on whether or not there is such genuine error, or it is a 'concocted error', with that matter naturally to be gone into by the learned Civil Judge as per the evidence led by the parties to the *lis*.

14. In view of the aforesaid discussion, subject to the observation made hereinabove, this petition is allowed, and the impugned order, having been passed allowing the amendment well after the trial had started with no due diligence shown by the respondent-plaintiff to have got the error corrected at any time before filing the suit, or even after the trial had started, is consequently set aside.

February 20, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No