

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

CR No.3775 of 2017 (O&M)

Date of Decision : 22.04.2019

Baldev Singh and others

..... Petitioners

Versus

Rajbir alias Rajbir Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. G. S. Punia, Senior Advocate with
Mr. A. B. S. Sidhu, Advocate
for the petitioners.

Mr. Deepak Sharma, Advocate
for respondent No.1.

SUDIP AHLUWALIA, J. (ORAL)

1. This revision is directed against the impugned order dated 05.05.2017 vide which the application of the petitioners-plaintiffs seeking amendment of their plaint was rejected by the Ld. Civil Judge (Junior Division), Ambala.

2. Background of the matter is that the petitioners-plaintiffs had filed a suit in the Ld. Court below seeking to challenge the Decree of Specific Performance obtained by respondent No.1 *ex parte* against respondents No.2 and 3, who had also agreed to sell the disputed properties in favour of the petitioners, as having been suffered on account of collusion between the two sets of respondents. The aforesaid impugned Decree otherwise had attained finality and was put into execution. The petitioners filed their objections against the execution by contending that they were in possession of the disputed land on the strength of the agreement executed in their favour on 15.09.1989, after which possession

of the land was passed in their favour on 29.12.1990 on payment of the full consideration price by way of registered *Power of Attorney*, and that the final three sale seeds were executed in their favour subsequently by the constituted Attorney on 26.04.1991.

3. The objections filed on behalf of the petitioners were rejected by the Ld. Executing Court, after which they challenged such rejection in appeal which was allowed by the Ld. District Judge, Ambala.

4. The Decree Holder/respondent No.1, thereafter, challenged the decision of the Ld. Appellate Court in ***CR No.5217 of 2013 – Rajbir @ Rajbir Singh vs. Baldev Singh and others***, which was allowed by this Court on 11.05.2016.

5. As a consequence, possession of the disputed land was allegedly taken over by the Decree Holder ostensibly in execution of the Decree in the concerned ***Civil Suit No.37 of 1991***, which according to the petitioners-plaintiffs is illegal, inasmuch as the original decree itself is vitiated by fraud/collusion, and stands impugned in the pending suit.

6. The Ld. Court below, however, rejected the proposed amendments by observing *inter alia* that “*Present plaintiff Baldev Singh has already been a party to said civil revision before Hon'ble High Court and it cannot be said that applicants-plaintiffs are not aware of the orders of Hon'ble High Court. Applicants-plaintiffs by way of amendment of the pleading seeks amendment that plaintiffs are entitled for restoration of possession and declaration be passed that they have been wrongly dispossessed. Matter has been to be concluded up till Hon'ble High Court and vide order dated 11.05.2016 in CR No.5217 of 2013 plaintiffs have already been dispossessed. Though, a subsequent event pending the suit,*

the dispossession of the plaintiffs, but as the matter has already been concluded, no ground is made to allow the said application for the proposed amendment in the plaint by plaintiffs. Therefore, in view of the discussion herein above, application under order 6 Rule 17 CPC is dismissed.” (Date of order and CR number have been wrongly mentioned in the order of the Ld. Civil Judge (Junior Division), Ambala as 11.05.20016 in CR No.5214 of 2013 which has been corrected in this order).

7. This Court has considered the impugned order *viz-a-viz* the observations of the Coordinate Bench in **CR No.5217 of 2013**. In Para No.9 of the judgment in the said revision, it is seen that the Court had observed that *“If a decree could be set aside as fraudulent, till such a decree is set aside on an alleged voidable nature of the decree, the Court will be wrongly lending a premium to such a person the benefit of assumption that the decree is void. A decree lawfully passed by the Court or what it appears to be so on the face of it ought to be taken to the next stage.”*

8. It is therefore, noteworthy that there is absolutely no comment by this Court in the aforesaid revision against the pending suit on merits. Consequently, it cannot be said as noted by the Ld. Court below that *“the matter has already been concluded”* when in fact there could be a possibility of Decree so executed to be found as being vitiated on any of the grounds made out in the pending suit filed by the petitioners.

9. Ld. counsel for respondent No.1 in all fairness concedes to the application to the extent that since possession of the disputed land has been taken by way of execution during the pendency of the suit of the

petitioners, so incorporation of this particular fact cannot be prevented by way of amendment. He, however, opposes certain other averments sought to be brought on the record by way of the impugned amendment, which according to the respondents are beyond the scope of the basic fact that possession of the land has been taken during the pendency of the petitioners' suit.

10. After hearing both sides, therefore, the revision petition is allowed in part after setting aside the impugned order. The proposed amendment which was sought to be incorporated by way of additional Para No.13(A) in the plaint is restricted to permitting the petitioners only to the following extent:-

“That during the pendency of the suit, defendant No.1 in furtherance of the execution proceedings of ex parte decree dt.28.11.2002 of specific performance in their favour, took the symbolic possession of part of the suit property, measuring 28 B-01 B and which was the subject matter of the said ex parte decree, on 19/20-5-2016, on the basis of some Misc. orders allegedly passed by the Hon'ble High Court, which were not legal and valid qua the rights of the plaintiffs. Hence the plaintiffs are entitled for restoration of possession.”

11. However, the proposed amendments in the Head Note and Prayer Clause of the concerned application (Annexure P-4) shall remain unaltered.

(SUDIP AHLUWALIA)
JUDGE

April 22, 2019
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No