

CR Nos.6884 of 2016 and 4851 of 2017 (O&M)

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

Date of decision : 23.01.2019

1. CR No.6884 of 2016 (O&M)

Yogesh Chander and others

... Petitioners

Versus

Jagat Singh and others

... Respondents

2. CR No.4851 of 2017 (O&M)

Yogesh Chander and others

... Petitioners

Versus

Jagat Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Sharma, Advocate
for the petitioners in both the cases.

Mr. B.K. Bagri, Advocate
for respondent Nos.1 to 3, 5 and 6 in CR-6884-2016.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two revision petitions, aforementioned, filed at the instance of the petitioners-defendants, against the impugned orders dated 20.09.2016 and 29.03.2017, whereby the application for amendment of the written statement, at the stage of defendant's evidence, was dismissed and the evidence of the defendants was also closed.

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Learned counsel for the petitioners-defendants submitted that the respondents-plaintiffs instituted the suit in the year 2011 for declaration and consequential relief of possession and permanent injunction. The defendants have become owner by virtue of the sale deed, but owing to coercive measures, they wanted to incorporate para No.2 in the written statement by adding the plea of adverse possession in alternative. It was further contended that issues in the suit, aforementioned, have been framed in the year 2015 and the plaintiffs concluded the evidence in 2016. Such a plea is alternative and not mutual destructive. The other party can also lead evidence, in case the amendment is allowed, subject to any terms and conditions, which this Court may deem fit as it does not tantamount to withdrawal of the admission.

Learned counsel for the respondents-plaintiffs in CR-6884-2017 supported the impugned orders, under challenge and submitted that plea of adverse possession sought to be incorporated is mutual destructive, which is not permissible in law as the defendants are claiming to be owner by virtue of the registered document. The aforesaid amendment tantamounts to admitting the title of the plaintiffs, 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. Sharma. The framing of the issues and closing of the evidence by the plaintiffs is not in dispute.

It would be apt to reproduce the amendment sought to be incorporated, which reads as under:-

"In para No.2 of the written statement, the following to be

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ordered to be added and amended/qualified in the following manner.

"That at the time of writing and registration of sale deed, Jagat Singh etc. delivered the possession of the sold land to Yogesh Chander and Kamlesh etc. which now at the spot the possession and cultivation has been continuing of the defendants. Therefore, in spite of the possession of defendants over the suit land has been continuous and peaceful adverse to the right of the plaintiffs for the last 41 years. And even if it is assumed that the sale deeds/mutation is illegal, still alternatively the defendants have perfected the title on the basis of peaceful and adverse possession by efflux of 41 years. Hence the suit is not maintainable in the present form, peaceful and hostile possession."

The aforesaid amendment is most innocuous and does not amount to altering the defence. No harm and prejudice would be caused to the plaintiffs as they would have a chance to rebut the same by leading the evidence. Though the petitioners-defendants had taken number of opportunities after closure of the evidence by the plaintiffs in 2016, the counsel for the petitioners, at this stage, submitted that he needs two effective opportunities to conclude the trial on the issues already framed, amended issue as well as on the proposed amendment also.

In view of the above, the impugned orders, under challenge, are hereby set aside. The following additional issue is ordered to be framed:

Whether the defendants have become owner in possession of the suit land by way of adverse possession? OPD

The petitioners-defendants shall be afforded two opportunities, in accordance with law, to lead the evidence in support of the already

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framed issues as well as amended issue. The plaintiffs/respondents shall also be at liberty to file the amended replication and also afford one opportunity to lead evidence in terms of the aforesaid amendment.

With the aforesaid observations, the revision petitions stands allowed subject to the payment of costs of ₹20,000/- to be paid to the respondents-plaintiffs.

23.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**