

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7382 of 2018(O&M)
Date of Decision: 04.09.2019

Ranjit Kumar

.....Petitioner

Versus

Kulbhushan Jain and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. K.S. Dhillon, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 07.09.2018 passed by Civil Judge (Junior Division), Jalandhar, vide which application for amendment of the plaint was dismissed.

[2]. The contention of learned counsel for the petitioner is that the factum of construction raised by the defendants came to the notice of the plaintiffs during course of evidence. The

proposed amendment is only to seek incorporation of plea of delivery of possession by demolishing the construction raised by the defendants on the suit land. The prayer in the aforesaid context is made that no evidence is required to be led on the aforesaid proposed amendment.

[3]. Learned counsel for the respondents has opposed the aforesaid contention by saying that the defendants being co-sharers in the joint land have already constructed according to their shares and construction by a co-sharer does not amount to ouster of another co-sharer.

[4]. Plaintiffs in their plaint have not alleged anything that the defendants have constructed the site beyond their shares. The plea taken in para No.7 of the plaint would give the following recital:-

“7. That the defendants No.1 to 3 have encroached upon a portion of property purchased by the plaintiffs on the pretext of having purchased the property measuring 4 kanals on the strength of GPA No.2905 dated 22.03.2001 vide unauthorised, illegal, unlawful and null and void sale deeds and the Halqa Patwari is not mutating the entire purchased land by saying that the defendants No.1 to 3 are previous purchasers and after mutation of land in their favour on the basis of null and void sale deed dated 08.11.2001, sufficient land is not available to be mutated in favour of the plaintiffs and he had advised the plaintiffs to get the sale deeds

in question declared null and void for facilitating mutation of property in their favour.”

[5]. In reply to para No.17 of the plaint, defendants have specifically pleaded that they are not encroachers of any land of the plaintiffs and they are in possession of their shares as owners and after construction, they are running a nursing institute.

[6]. During course of arguments, the factum of land being joint between the parties came to fore qua which suit for partition is statedly pending.

[7]. It is a settled principle of law that every co-sharer would be deemed to be in possession of every inch of land till the land is partitioned by metes and bounds. Since original plaint does not show allegation of construction beyond share, therefore, the proposed amendment would not advance the case of the plaintiffs any more. It is a settled principle of law that all *bona fide* amendments are to be allowed in accordance with law. The amendment is found to be not *bona fide* and the same cannot be allowed at this stage. Since the partition proceedings are pending, therefore, anything observed on the concept of co-sharership may prejudice the case of either of the parties.

[8]. For the reasons recorded hereinabove, I do not find any justification to interfere in the impugned order. This revision

petition is found to be totally devoid of merits and is accordingly dismissed.

04.09.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No