

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1071 of 2020

Date of Decision: 6.3.2020

Satpal

...Petitioner

Vs.

Shyambir and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Om Parkash Sharma, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. I fail to locate any legal infirmity in the well-reasoned words in the order of the learned trial Court dismissing the application of the plaintiff-petitioner presented under Order 6 Rule 17 CPC for amending the plaint at the fag-end of the trial when it is ripe for hearing. The principle of *caveat emptor* applies when the plaintiff has purchased properties from co-sharers of smaller parcels of land through several sale deeds from out of the joint property in excess of the shares of the sellers, as is the counter case set up by the defendants contending that sales are in excess of entitlements to suit land which have not been partitioned. Therefore, defendants say the sale deeds have to be cut down to size according to un-partitioned title of each of the vendors as per their shares.

2. The trial judge reasons that these facts were to the plaintiff's knowledge even before the commencement of the suit and he should

have pleaded it in the plaint. Therefore, he cannot be heard to seek introduction of these facts at a belated stage, which fact he obviously must have and will be deemed to be aware of at the time of registration had he exercised due diligence of the revenue record at the time of purchase. The learned trial judge has not committed any error in holding that such an amendment will alter the character and nature of the suit, after the evidence has been adduced by the parties. The trial is at the end stage and the case is fixed for arguments reaching maturity after years of contest.

3. Interestingly, before he filed the present application, the petitioner's first attempt was to withdraw his entire suit with permission to file again. The request was repelled by the trial Court. He then turned around to launch an attack through amendment of plaint.

4. The only argument advanced by Mr. Sharma is that in the order dismissing the application under Order 23 Rule 1 CPC for withdrawal of the suit he followed the advice of the Judge to move an amendment application and having followed the advice, he cannot be punished.

5. This is a strange argument to invent out of the hat. I am afraid to say, judges don't advise remedies to the parties or how to cure defects on which the cause of action and limitation may be based, as it is the job of professional lawyers who are paid fee. Nor did the trial judge issue any advance ruling on the amendment application while

dismissing the application for withdrawing the suit with permission to file a fresh one. All the judge meant was in case such an application is presented it will be considered and decided in accordance with law. This interpretation placed by counsel is a complete misreading of the purport of that order. The trial Court had to consider the application at hand which was for amendment of the plaint and, therefore, it will have to be read *de hors* the comment, if it intended to make any such. Attempt to withdraw the suit after the trial proceeding is played out is not a small matter as the defendants try to project as an innocuous demand. Defendants have been put to face a full-fledged trial by leading their evidence in defence of the suit while praying for its dismissal.

6. Lastly, counsel pleads that in this situation with dismissal of both the applications where would his client go. He would be doomed. My answer to him is that it is not for the Court to suggest where the petitioner should go. Judges who have come from the Bar have forfeited their right to advise clients the day they took the oath of office and till they serve on the bench. Litigants they cannot advise at all. They can only write opinions in matters before them which have binding nature and are appealable if the party is dissatisfied.

7. For the observations made above I find no infirmity in the impugned order warranting interference in jurisdiction under Article 227 of the Constitution, and accordingly the petition is dismissed being devoid of merit. Needless to say, an opinion is not expressed on the

merits of the case, nor will the order influence the mind of the trial court when it weighs the evidence, forms it opinion and passes final judgment on the merits of the case.

(RAJIV NARAIN RAINA)
JUDGE

6.3.2020
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No