

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4534 of 2019 (O&M)

Date of Decision: 25.02.2020

Prem Chand Gupta

... Petitioner(s)

Versus

Amrit Pal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Sunny K. Singla, Advocate
for the petitioner(s).

Mr. Aayush Gupta, Advocate
for respondent No.1.

Anil Kshetarpal, J.

The plaintiff/petitioner has filed the present revision petition against the order passed on 10.05.2019 dismissing the application for permission to amend the plaint.

The plaintiff has filed the suit in the year 2012 with the following prayers:

“Under the facts and circumstances stated above, it is, therefore, prayed that in the interest of justice, equity and good conscience, a decree for:-

- a) *symbolic possession by way of Specific Performance of the agreement to sell dated 8.11.2010 directing the defendant No.1 to execute and get registered the sale deed in favour of the plaintiff with regard to land measuring 4 kanals 1/2 Marla comprised in Khasra No.*

12//20/1, Khata No. 73/94 as per Jamabandi for the year 2006-2007, situated at Majara Khurd, Hadbast No. 95, Tehsil & Distt. Ludhiana upon receipt of the amount to be incurred towards stamp duty and charges for execution and registration of the sale deed, after getting cancelled/set aside the alleged (i) registered exchange deed bearing Vasika No. 6257 dated 15.7.2011 illegally executed between defendant No.2/Harjinder Pal Singh (having power vide alleged General Power of Attorney dated 20.4.2011 duly attested by Notary Public, Vancouver and endorsed with the Commissioner, Patiala at serial No. 763 dated 9.5.2011) ad defendant No.1 exchanged the suit land 4 Kanals 1/2 Marla comprised in Khasra No. 12//20/1, Khata No. 73/94 as per Jamabandi for the year 2006-2007, situated at Majra Khurd, Hadbast No. 95, Tehsil & Distt. Ludhiana owned by him with the land owned by defendant No.2 measuring 5 Kanals 11 Marlas comprised in khasra No. 11//14(4-14) – 15/1/2 (4-17), khata No. 38/45 as per jamabandi for the year 2006-2007, situated in village Majra Khurd, Hadbast No. 95, Tehsil and Distt. Ludhiana and (ii) the Mutation No. 432 dated 21.7.2011 entered and sanctioned on the basis of the said illegal exchange deed AND (iii) the alleged registered sale deed bearing Vasika No. 14208 dated 13.12.2011 illegally executed by

defendant No.1 through his alleged general attorney defendant No.3/Prem Gupta (having power vide Registered General Power of Attorney bearing Vasika No. 4291 dated 8.11.2011 registered with the Sub Registrar, Ludhiana) in favour of defendant No.4/Sunila Gupta with regard to land measuring 5 Kanals 11 Marlas comprised in khasra No. 11//14 (4-14)-15/1/2 (4-17), khata No. 38/45 as per jamabandi for the year 2006-2007, situated in village Majara Khurd, Hadbast No. 95, Tehsil and Distt. Ludhiana and (iv) the mutation No. 442 dated 17.2.2012 entered and sanctioned on the basis thereof;

AND

- (b) Declaration to the effect that the alleged registered exchange deed bearing Vasika No. 6257 dated 15.7.2011 illegally executed between defendant no.2/Harjinder pal Singh Sandhu through his general attorney/son Ajit Pal Singh (having power vide alleged General Power of Attorney dated 20.4.2011 duly attested by Notary Public, Vancouver and endorsed with the Commissioner, Patiala at serial No. 763 dated 9.5.2011) and defendant No.1/Amritpal Singh, vide which the defendant No.1 exchanged the suit land 4 Kanals 1/2 Marla comprised in Khasra No. 12//20/1, Khata No. 73/94 as per Jamabandi for the year 2006-2007, situated at Majara Khurd, Hadbast No. 95, Tehsil & Distt. Ludhiana owned by him*

with the land owned by defendant No.21 measuring 5 Kanals 11 Marlas comprised in khasra No. 11//14 (4-14) – 15/1/2 (4-17), khata No. 38/45 as per jamabandi for the year 2006-2007, situated at village Majara Khurd, Hadbast No. 95, Tehsil and Distt. Ludhiana and as well as the Mutation No. 432 dated 21.7.2011 entered and sanctioned on the basis of the said illegal exchange deed, are illegal, null and void, having no legal value in the eyes of law and is not binding upon the valuable legal rights of the plaintiffs and as such is liable to be cancelled/set aside;

AND

- C) FOR DECLARATION to the effect that the alleged Registered General Power of Attorney bearing Vasika No. 4291 dated 8.11.2011 registered with the Sub Registrar, Ludhiana executed by Amritpal Singh/defendant No.1 in favour of defendant No.3/Prem Gupta is illegal, null and void and is liable to be set aside;*
- (d) FOR DECLARATION to the effect that alleged sale deed registered sale deed bearing Vasika No. 14208 dated 13.12.2011 illegally executed by defendant No.1 through his alleged general attorney defendant No.3/Prem Gupta (having power vide Registered General Power of Attorney bearing Vasika No. 4291 dated 8.11.2011 registered with the Sub Registrar, Ludhiana) in favour of*

defendant No.4/Sunila Gupta with regard to land measuring 5 Kanals 11 Marlas comprised in khasra No. 11//14 (4-14) – 15/1/2 (4-17), khata No. 38/45 as per jamabandi for the year 2006-2007, situated at village Majara Khurd, Hadbast No. 95, Tehsil and Distt. Ludhiana and as well as the Mutation No. 442 dated 7.2.2012 on the basis thereof in favour of defendant No.4, are also illegal, null and void, having no legal value in the eyes of law and is not ;binding upon the valuable legal rights of the plaintiffs and as such is liable to be cancelled/set aside.

AND

- e) for permanent injunction restraining the defendants themselves or through their attorneys, agents, representatives, associates etc. from illegally interfering in any manner whatsoever, in the peaceful possession of the plaintiff over the suit land and from creating any obstruction/hurdle in any manner whatsoever, if construction of any nature is raised by the plaintiff over the suit land and further restraining them from in any manner further illegally alienating/transferring the suit land or any part thereof by way of sale, gift, mortgage, exchange or lease/rent etc. in favour of any other person or creating any third party interest therein on the basis of the alleged exchange deed and sale deed in violation of the aforesaid agreement to sell dated 8.11.2010, may*

kindly be passed in favour of the plaintiff and against the defendants, with costs. Any other additional or alternative relief to which the plaintiffs may be found entitled to under law and equity, may also be granted to the plaintiff”.

The defendants contested the suit. The execution of agreement to sell was admitted. During the pendency of the suit, a small part of the land agreed to be sold, was also compulsorily acquired by the State. The plaintiff filed an application for amendment of the plaint so as to stake a claim on the compensation deposited by the State. The prayer was allowed. Amended plaint was taken on record.

The defendant No.1 filed a written statement to the amended plaint and pleaded that at the time of partition on 06.07.2011, land comprised in various khasra numbers fell to the share of defendant No.1. It was further pleaded that agreement to sell is also evidencing/followed by delivery of possession, therefore, the stamp duty is payable.

The plaintiff, thereafter, once again filed an application for amendment of the plaint so as to clarify that he has been delivered possession in accordance with the order of partition.

The aforesaid application was dismissed by the learned Civil Court by a detailed order.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the file.

In the considered view of this Court, the present revision petition can conveniently be disposed of by directing the learned trial Court

which in the considered view of this Court is only classificatory, irrespective of the fact that it has not formally been added in the pleadings. This direction has been issued in view of the provisions of Order VI Rule 2 CPC, which require that the pleadings are required to be confined to the facts and that too in a concised form.

Keeping in view the aforesaid facts, the present revision petition is disposed of with the direction that the learned trial Court would not refuse to consider the plea sought to be added by way of amendment on the ground that it is beyond the pleadings.

(Anil Kshetarpal)
Judge

February 25, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No