

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 604 of 2019 (O&M)

Date of Decision: 09.08.2021

Anil Thukral

... Petitioner(s)

Versus

Amit and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Prateek Mahajan, Advocate
for the petitioner(s).

Mr. Prateek Sodhi, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The defendant/petitioner assails the correctness of the order passed by the trial Court while dismissing the application, filed under Order VI Rule 17 CPC.

2. The plaintiffs/respondents claim to have purchased the property in question from the defendant's father. The plaintiffs have filed a suit for possession. The defendant, while contesting the suit has already taken various defences including the fact that his possession is continuous and in existence even before the alleged purchase by the plaintiffs and therefore, the plaintiffs are not competent to file the suit and therefore, the suit filed by them cannot be proceeded with. It has further been pleaded that the suit filed by the plaintiffs is barred by limitation.

3. When the suit was at the stage of rebuttal and final arguments,

the defendant filed an application for permission to amend the written

statement and substitute para 7 thereof. The proposed amendment reads as under:-

“That the possession of the replying defendant is continuous, adverse and prevalent even before the alleged purchases, as alleged so by the plaintiffs, and rather much prior to the filing of the suit by the defendant against his father in the year 2002, as duly upheld so vide judgment/decreed dated 31.3.2012 (the certified copy whereof is Annexure D-1), under these circumstances, the plaintiff are not competent to file the present suit and the suit filed by them cannot be proceeded with and otherwise, is liable to be dismissed out rightly”.

4. The trial Court, after appreciating the record, found out that the defendant has failed to make out a case for permission to amend the written statement.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel representing the petitioner submits that the petitioner can be permitted to take alternative pleas. He submits that the petitioner has already pleaded his continuous possession before the date of the alleged purchase. He, hence, submits that the trial Court has erred in dismissing the application.

7. On the other hand, learned counsel representing the respondents/plaintiffs contends that the defendant cannot be permitted to take a new plea at the stage when the plaintiffs and the defendant have already concluded their defence and the case is nearing the conclusion. He further submits that the possession by a son in the property of his father

cannot be considered as adverse, ordinarily. He further submits that the defendant has failed to make out a case for allowing the amendment.

8. After having heard the learned counsel for the parties at some length, this Bench is of the considered view that at this stage, the defendant cannot be permitted to defend the suit on the basis of a fresh and absolutely new plea. Once the defendant has allowed the trial to make substantial progress, then he cannot, at this stage, be permitted to set up a new defence.

9. Learned counsel representing the defendant/petitioner, however, contends that in the judgment dated 31.03.2012, the petitioner has been found to be in possession of the property prior to the year 2002 and therefore, the suit filed by the plaintiffs is beyond limitation. He submits that the Court may not adjudicate upon the aforesaid point as the application for permission to amend the written statement has been dismissed.

10. It is well settled that the pleadings are required to be confined to the facts and the evidence is not required to be pleaded. It is expected that the facts are required to be pleaded in a concise form and the parties would be permitted to elaborate thereon by leading evidence at the stage of trial. It is also not in dispute that the judgment and decree dated 31.03.2012 has already been produced and exhibited.

11. Keeping in view the aforesaid facts, while disposing of the revision petition, it is observed that the trial Court, while deciding the suit, will also examine the effect of the judgment dated 31.03.2012 and will also record a finding on the maintainability of the suit with reference to the question of limitation.

12. With these observations, the present revision petition is

disposed of.

13. Nothing stated in the order shall be considered as an expression of opinion on the merits of the case.

14. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

August 09, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No