

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

CR-1949-2021(O&M)

Date of decision:-17.9.2021

Sham Lal

...Petitioner

Versus

Ramesh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Parminder Singh, Advocate
for the petitioner.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that plaintiff Shyam Lal son of Ramesh Chand, resident of village Salwan, Tehsil Assandh District Karnal (herein petitioner) had filed a suit for declaration and permanent injunction against defendants Ramesh, Ponam and Brahm Dutt seeking to get transfer deed No.363/1 dated 28.7.2016 and mutation sanctioned on the basis thereof declared as illegal, null, void, ineffective qua the rights of the plaintiff and further asked for grant of decree for permanent injunction restraining defendant No.2 from alienating the suit

land and for dispossessing the plaintiff therefrom illegally and forcibly.

According to the plaintiff, defendant No.1 Ramesh Chand father of the plaintiff was married with Smt.Nanhi Devi (since dead) and from that wedlock plaintiff and perma defendant No.3 Brahm Dutt were born; Nanhi Devi has expired, thereafter Ramesh Chand got married with defendant No.2 Poonam; the property in dispute in the name of defendant No.1 Ramesh Chand happened to be ancestral property, however defendant No.1 executed a transfer deed in favour of defendant No.2 but the same is null and void and is liable to be set aside. When contesting defendants refused to admit the claim of the plaintiff, then he had filed the suit in question.

On notice, defendants No.1 and 2 put in appearance and filed written statement contesting the suit denying that the land in dispute was ancestral property qua defendant No.1 and the plaintiff, rather it was claimed that the land in question is self acquired property of defendant No.1; the land was legally and validly transferred by defendant No.1 in favour of defendant No.2 vide impugned transfer deed. Defendants No.1 and 2 prayed for dismissal of the suit.

Issues on merits were framed. The parties led evidence in their respective claims. Vide judgment dated 24.9.2019, the Court of Civil Judge (Junior Division), Assandh had dismissed the suit.

Feeling aggrieved the plaintiff had filed an appeal before District Judge, Karnal. It may be mentioned here that during the pendency of the suit, both the defendants had expired and their LRs were brought on record. During the proceedings before the Appellate Court, the

appellant/plaintiff filed an application under Order 6 Rule 17 CPC contending that vide order dated 29.10.2016 while allowing LR's of Ramesh Chand and Poonam to be brought on record, the trial Court had adjourned the proceedings for filing of amended plaint, however, counsel for the plaintiff had filed amended title only; the death of defendants being a subsequent event, it was necessary to amend the plaint so as to take up the plea that the land having come to defendant Poonam from her husband Ramesh Chand and on her death would revert back to LR's of defendant No.1 in terms of Section 15(2)(b) of Hindu Succession Act, 1956, as such plaintiff and defendant Brahm Dutt and Pooja were entitled to land in equal shares but due to inadvertent error committed by the then counsel for the plaintiff, this amendment could not be prayed for. However, the same is necessary though formal in nature and it should be allowed though no further evidence would be required to be led.

The application was resisted on behalf of the defendants on the ground of delay and plaintiff trying to introduce fresh cause of action in garb of amendment and trying to change the nature of the suit.

Learned District Judge, Karnal vide order dated 27.8.2021 had dismissed the application. The operative part of the order for ready reference is being reproduced as under:

4. Heard. The suit was filed by Shyam Lal, sons of Ramesh Chand from his first wife challenging the relinquishment deed executed by Ramesh Chand in favour of his second wife Poonam primarily on the ground that the property being ancestral, Ramesh lacked competence to transfer it. It is a matter of fact that

before filing written statement Ramesh and Poonam died. A question arises as to whether their death is going to have any impact on the outcome of the suit in context of the prayer made in the plaint. To my mind, it shall have no bearing. The dispute remains the same. The plaintiff would still be required to prove that the land was ancestral in nature, therefore, Ramesh was not competent to execute relinquishment deed in favour of his second wife Ponam. In the event of his being successful in proving the plea, the property would revert to Ramesh to be succeeded by his heirs accordingly. However, if the plaintiff fails to prove that the property was ancestral, the relinquishment deed shall remain intact and the property shall be inherited as if it were owned by Poonam exclusively. Whether it will devolve on the heirs of Ramesh or otherwise is a question of law which can be decided even in the absence of specific pleadings so as to bring the outcome in consonance with the subsequent developments. The matter would have been different, had the plaintiff sought to abandon his plea with regard to lack of competence in Ramesh to execute relinquishment deed. He wants to stick to this plea which forms the core of the dispute. Any amendment, if allowed will amount to change in the nature of the suit, which is not permitted. Therefore, the application is dismissed.

Feeling aggrieved by the said order, the plaintiff has filed the present revision petition.

I have heard learned counsel for the revisionist besides going through the record.

Order VI Rule 17 CPC deals with amendment of pleadings providing that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the proviso is there dilating that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso clearly bars moving of application of amendment at this belated stage. On death of the defendants when their LRs were brought on file, the plaintiff could have asked for amendment in the plaint at that stage but it was not so done and now when the case is at the stage of appeal, the application has been filed. The proposed amendment is not found to be necessary for the purpose of determining the real question of controversy between the parties. Even otherwise, such type of legal objections can be taken during the course of arguments and no specific pleading in that regard is required.

The order passed by the lower Appellate Court is quite detailed, well reasoned based on proper appraisal and appreciation of the legal as well as factual position and the same does not suffer from any illegality and infirmity and can certainly be not termed as arbitrary or having been passed against settled legal principles, which might have

called for interference by this Court while exercising revisional jurisdiction.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

17.9.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No