

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2215-2018(O&M)
Date of decision: 22.08.2022

Baljit Singh

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Jain, Advocate, for the petitioner.
Mr. Harsh Vardhan, AAG, Haryana and
Mr. Jaspal S. Pannu, AAG, Haryana
Mr. P.S.Jammu, Advocate, for respondent no.3 to 6.
Mr. Dheeraj Narula, Advocate, for respondent no.7 & 8.

ANIL KSHETARPAL, J(Oral)

The petitioner's application under Order VI Rule 17 CPC for permission to amend the plaint has been dismissed by the trial Court on the ground that the proposed amendment is vague on the face of it and it will change the nature of the suit which is not permissible.

Some facts are required to be noticed.

The plaintiff (the petitioner herein) filed a suit while praying as under:-

“It is, therefore, prayed that a decree for declaration to the effect that the name of the plaintiff has wrongly been shown as 'Baljeet Singh Hisedar Tabla Dahinda Gurmail Singh Surjeet Singh sons of Labh Singh son of pritam Singh Har do sum Bhag Vasi Deh Tabla Garindagan” of land as comprised in khewat No.133, 6/1 (0-18). kitta 3, area measuring 12 kanals 18 marlas, situated within the revenue estate of village Mithri, Tehsil Dabwali, District Sirsa, as per fard jamabandi for the year 2011-12, which is patently wrong, against law and facts, null and void abinitio, without notice, without any order or authority, ineffective and inoperative upon the rights of the plaintiff and the said entry is liable to be set aside and the revenue record is liable to be corrected in favour of the plaintiff accordingly and with a consequential relief of permanent injunction restraining the defendants no.1 and

2 from disbursing the amount of compensation to the private defendants and the private defendants be restrained from receiving the amount, on the strength of the wrong entry, in any manner; may kindly be passed in favour of the plaintiff and against the defendants, with costs of the suit, in the interest of justice.

Any other relief which this Hon'ble Court may deem fit be also granted in favour of the plaintiff and against the defendants, in the interest of justice."

The defendants while filing the written statement claim that the vendor from whom the plaintiff purchased the property had no title over the suit property. Before the plaintiff started leading his evidence, an application for permission to amend the plaint was filed. In substance, the following amendments were sought:-

"i. That in the headnote of the plaint at page 2 in 15th line, after the words "accordingly" and before the words "And" the plaintiff want to add following lines;

"and in case the sale deed bearing no.1545 dated 23.09.1972 and its resultant mutation bearing no.1652 is set aside on the ground of lack of ownership of the vendor of the plaintiff, then the plaintiff is entitled to land equal to the land purchased by the plaintiff vide above said sale deed from the land of the defendant no.3 to 6".

ii. That the aforesaid lines are also sought to be mentioned in the prayer clause in the same manner as are sought to be added in the head note of the plaint.

iii. That further the plaintiffs want to add para no.5-A in the plaint which is hereby reproduced as under:-

5- That the defendant no.7 and 8 have challenged the sale deed bearing no.1545 dated 23.09.1972 executed by predecessor-in-interest of the defendants no.3 to 6 in favour of the plaintiff and its consequential mutation bearing no.1652 alleging that the said sale deed and its mutation is against law and facts, illegal, without authority, void abinitio, ineffective and inoperative upon their rights and also without delivery of the possession. In fact, the above said sale deed and its resultant mutation are very much valid and on the basis of the said sale deed, the plaintiff is owner and in possession of the land mentioned in the sale deed. The sale deed is with consideration and the vendor of the plaintiff was having full right and authority to sell the suit land.

Moreover, the plaintiff had purchased the suit land on the basis of relevant jamabandi in which the name of the vendor, the predecessor-in-interest of the defendants no.3 to 6 was rightly recorded as owner being co-sharer. It is pertinent to mention here that the predecessor-in-interest of the defendants no.3 to 6 was real brother of the father of the plaintiff. The predecessor-in-interest of the defendants no.3 to 6 has since died and a mutation bearing no.2966 has been entered and sanctioned in favour of the defendant no.3 to 6 and they are first class legal heirs of late Shri Chatain Singh, who is the husband of defendant no.3 and father of defendants no.4 to 6.”

The plaintiff claims that in terms of sale deed dated 23.09.1972, the plaintiff is entitled to an alternative land equal to the land purchased by the plaintiff in a situation where the vendor is not found entitled to sell the original property. The aforesaid application has been dismissed on the ground noted above.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioner (the plaintiff) claims that the amendment sought is neither vague nor it would change the nature of the suit. While criticizing the order passed by the Additional Civil Judge (Sr. Divn.) Dabwali, he claims that the alternative relief sought to be added by way of an amendment is arising from the main suit itself.

Per contra, the learned counsel representing the respondent contends that the petitioner is not entitled to an alternative land equal to the land purchased in a situation where the vendor does not have title.

This court has considered the submissions and examined the paper book.

It is well settled that the courts must make sincere attempts to avoid multiplicity of suit. In the facts of the present case, the alternative

relief sought by way of an amendment is arising from the registered sale deed dated 23.09.1972. On the one hand, the plaintiff claims a decree of declaration that the entry in the revenue record is wrong, whereas, on the other hand, the defendants claim that the plaintiff's vendor has no right to sell the property.

The plaintiff is referring to the terms of the sale deed which provide for mode of settling a contingency.

Hence, the trial court committed an error in rejecting the amendment application on the ground that the proposed amendment is vague and it would change the nature of the suit.

Keeping in view the aforesaid facts, the order under challenge is set aside. The application filed for permission to amend the plaint shall stand allowed. The trial court is requested to proceed with the matter in accordance with law.

All the pending miscellaneous applications, if any, are also disposed of.

August 22, 2022

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**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>