IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6748 of 2018 (O&M)
Date of decision: 11th November, 2022

Kamal Nain

… Petitioner

Versus

Piara Singh

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ranjit Saini, Advocate for the petitioner.

Mr. G.S. Nagra, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

CM No.9413-CII of 2021

The instant application for impleading LRs of the respondent is taken up for hearing today. The averments made in the application that the sole respondent Piara Singh has since died on 15.05.2021, are duly supported by the sworn attested affidavit of the applicant.

Learned counsel for the non-applicant/appellant submits that he has no objection in case the prayer for impleading LRs of the respondent is allowed.

In the light of the same, the application is allowed and the legal heirs detailed in para No.2 of the application are allowed to be impleaded as Legal Representatives of the deceased respondent.

However, it is made clear that the same shall be purely for the decision of the present matter and shall not be used for any collateral purpose.

Amended memo of parties is taken on record.

CR No.6748 of 2018 (O&M)

The petitioner is impugning the order dated 07.09.2018 passed by learned Addl. Civil Judge (Sr. Divn.), Derabassi vide which an application filed by him under Order VI Rule 17 CPC for amendment of the plaint and under Order 1 Rule 10 CPC for impleading Bank of India as defendant in the suit in question was dismissed.

Learned counsel for the petitioner, at the outset submits that since the loan qua the suit property stands paid by the respondent, hence he would not press the application under Order 1 Rule 10 CPC and also the amendment sought in the plaint qua the loan transaction.

Learned counsel further submits that the impugned order suffers from patent illegality as it is contrary to the settled principles of law pertaining to amendment of pleadings and hence, it deserves to be set aside. Learned counsel has submitted that earlier the petitioner had filed an application for directing the respondent to clear the position on his title and to prove his ownership of land measuring 2 Bighas 9 Biswas out of total land measuring 5 Bighas 8 Biswas bearing Khewat/Khatuni No.145/240. Thereafter, the Local Commissioner who was appointed by the trial Court, submitted his report wherein the respondent was found to be owner of 1/4th share in Khasra No.1132 consisting of total area of 4 Bighas. Thus, it is evident that he is owner of only 1 Bigha 0 Biswa in the said Khasra No.1132. Learned counsel further submits that after receipt of the report of the Local Commissioner, when the petitioner inspected the revenue records including the maps, he realized that the respondent had in fact played a fraud upon him as he was neither owner of 2 Bighas of land nor was the said land adjacent to a passage as had been projected by him. Therefore, in view of these subsequent events coming to light, an application under Order VI Rule 17 CPC was moved by him. Learned counsel, still further submits that the trial Court, while passing the impugned order, failed to appreciate that the incorporation of the facts qua a fraud having been played by the respondent upon him as well as inclusion of additional relief of recovery of thrice the amount of earnest money was necessary for the just and effective adjudication of the dispute between the parties. He has, still further submitted that the trial was yet to commence and hence the prayer of the petitioner be accepted as no prejudice would be caused to the respondent.

While controverting the submissions made by counsel opposite, learned counsel for the respondent contends that all the facts sought to be incorporated by way of proposed amendment were well within the knowledge of the petitioner prior to the institution of the suit, hence, at this stage he cannot be allowed to incorporate those facts as evidently he had failed to exercise due diligence. Learned counsel further submits that as per the revenue records, the respondent is owner of sufficient land and hence, he would be in a position to execute and register the sale deed. Furthermore, even as per the jamabandi the respondent is in possession of 2 Bighas 11 Biswas of land in Khasra No.1132. While drawing the attention of this Court to the agreement to sell, learned counsel for the respondent has still further submitted that a perusal of the same reveals that the petitioner had agreed to purchase the share of the respondent in the joint land rather than a specific portion/share. It has therefore been vehemently argued by learned counsel for the respondent that since the parties are yet to lead evidence qua the ownership of the respondent as well as the report of the Local Commissioner, the proposed amendment is premature at this stage and should not be allowed.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be apposite to observe here that the object behind allowing amendment of proceedings is to avoid multiplicity of proceedings and the Court must unhesitatingly allow such amendment if it appears to be necessary for the purpose of determining the real question in controversy between the parties, to do complete justice. However, at the same time, the Courts must not turn a blind eye to any prejudice or injustice which may be caused to the opposite party by the proposed amendment.

Adverting to the case in hand, it is a matter of record that the Office Kanungo was appointed as a Local Commissioner by the trial Court vide order dated 17.07.2017 to submit its report with respect to the ownership of the respondent qua khasra No.1132. In compliance of the said orders, the Local Commissioner submitted its report dated 25.07.2017 (Annexure P-9) wherein the respondent was stated to be owner of 1 Bigha 0 Biswa in Khasra No.1132.

This Court at this stage cannot be expected to delve into the genuineness or otherwise of the report of the Local Commissioner or for that matter, even the pleadings sought to be incorporated by way of the proposed amendment. It would be a matter of trial and would be decided only after the parties have led their respective evidence in the aforementioned regard.

However, at this stage as no witness has yet been examined, the petitioner should not be denied an opportunity to put forth his case in the plaint. The proposed amendment qua fraud having been played upon the petitioner would help in the just and effective adjudication of the dispute between the parties.

This Court is however not inclined to allow the inclusion of the alternative relief of recovery of double the amount of earnest money by way of proposed amendment, as the petitioner in his plaint has already prayed for recovery of earnest money along with damages. Even otherwise, a perusal of order dated 08.10.2018 clearly reveals that notice of motion was issued by this Court only to the limited aspect of amendment being necessitated on account of the defect in title having come to light after the institution of the suit in question.

Accordingly, the petitioner is permitted to make the amendments as sought in para No.1 to 7 of the plaint, except the loan part, as per the application under Order VI Rule 17 CPC (Annexure P-11).

As a sequel to the above, the instant revision petition is disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

November 11, 2022
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No