

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7073 of 2017 (O&M)
Date of decision: 29.10.2022

Gurmit Singh

..Petitioner

Versus

Joginder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prevez Chugh, Advocate, for the petitioner.
Mr. Arun K. Bakshi, Advocate, for the respondents

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a plaintiff in a suit for grant of decree of declaration to the effect that the plaintiff is owner in possession of 36 kanals and 13 marlas of land and the registered sale deed executed by defendant no.2 in favour of defendant no.1 on 23.12.2013 is illegal, void, ineffective and inoperative qua the rights of the plaintiff.

In paragraph 8 of the plaint, the plaintiff has asserted as under:-

“8. That all the above said sale deed bearing Vasika No.1557 dated 23.12.2013 is very much undervalued and the total sale consideration of the above said sale deeds comes to the amount to the tune of Rs.75,49,000/- (Rupees Seventy Five Lakhs Forty Nine thousand only) and in case this Hon'ble Court finds at the time of final adjudication, that the plaintiff is entitled to the sale price of the suit property, along with the interest. This relief of recovery as claimed by the plaintiff is not adequate relief but merely an alternative relief. The plaintiff will pay the requisite court fee on the plaint when so ever, directed by

the Court.”

2. During the pendency of the suit, the plaintiff filed an application for permission to amend the plaint in order to incorporate the alternative relief of recovery of the Rs.75,49,000/- as already asserted in paragraph 8 of the unamended plaint. The same has been dismissed on the ground that it would change the nature of the suit and the application has been filed after a considerable delay.

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

4. It is evident that the plaintiff while filing the suit has already stated that the plaintiff is entitled to the sale price of the suit property along with interest. However, he did not incorporate this fact in the caption and the prayer made in the plaint. Moreover, the additional relief sought is arising from the suit itself. The trial Court has wrongly held that it would result in changing the nature of the suit.

5. As regards the question of delay, it may be noticed that the Court even in the absence of an amendment can grant such relief particularly in view of the existing pleadings in paragraph 8 of the plaint. In fact, the plaintiff has already prayed for alternative relief of recovery but inadvertently, the same was not incorporated in the prayer clause.

6. The learned counsel representing the respondent contends that the plaintiff died in the year 2018 and therefore, the suit itself has abated.

7. The States of Punjab, Haryana and Union Territory, Chandigarh have carried out an amendment in Order XXII Rule 3 vide notification dated 21.02.1992, wherein it is provided that the suit filed by the plaintiff shall not abate even if the application for bringing on record the

legal representatives of the deceased has not been filed. The amendment in Order XXII Rule 3 (2) CPC is extracted as under:-

“Order XXII Rule 3 (2)- Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

8. In view of the aforesaid facts, the revision petition is allowed. The order refusing the permission to amend the plaint is set aside. The application for amendment shall stand allowed. The Court is requested to proceed with the matter after granting an opportunity to to the defendant to file reply to the amended plaint.

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

October 29, 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>