

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

**Civil Revision No.1473 of 2020(O&M)
Date of Decision: 28-03-2022**

Malkiat Singh

.....Petitioner

Versus

Kasturba Gandhi Memorial Trust & Another

.....Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mohd. Yousaf, Advocate, for the revisionist-petitioner.

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MEENAKSHI I. MEHTA, J.

CM No.2278-CII of 2022

This application has been moved on behalf of the applicant-petitioner for placing the copies of the zimni orders passed by the trial Court, on the record, as Annexure P-10 and for seeking exemption from filing the certified copies of the same.

Heard.

Keeping in view of the reasons as mentioned in the instant application, the same is allowed as prayed for.

CR No.1473 of 2020

By way of the instant petition, the revisionist-petitioner (for short 'the petitioner') has laid challenge to the order dated 14.01.2020 (Annexure P-6) passed by the Civil Judge (Junior Division) Ludhiana (for short the 'trial Court') whereby the application (Annexure P-4) moved by him under Order 6

Rule 17 CPC for seeking amendment in the plaint, has been dismissed.

The facts, in brief, leading to the filing of the present revision petition, are that the petitioner (as plaintiff) filed a Civil Suit against the respondents (defendants before the trial Court) for seeking the decree for declaration to the effect that the suit property, as detailed in the head note of the plaint (Annexure P-1), was the property of respondent No.1 and the Sale Deed dated 11.11.2013 allegedly executed by this respondent in favour of respondent No.2 was illegal, null and void and was the result of collusion and fraud and was, therefore, liable to be set aside. Thereafter, he moved the afore-said application for seeking the amendment in the plaint by way of adding the relief therein to the effect that the suit property deserved to be reverted back to him and its ownership was required to be recorded in his name and also by way of incorporating Paragraph No.5-A in the plaint with the averments that the suit property was gifted for the welfare of the children of the Village and the said Sale Deed was executed in violation of the very purpose of 'gift' and therefore, the said gift stood revoked on this count and resultantly, the suit property deserved to be reverted back to him as the owner of the same and its possession was also required to be restored to him. However, the trial Court, vide the impugned order, has dismissed the said application.

I have heard learned counsel for the petitioner in the instant revision petition and have also perused the file thoroughly.

Learned counsel for the petitioner has contended that the father of the petitioner had gifted the suit property to respondent No.1-Trust for the

welfare of the children in the Village but the Trust had sold the same to respondent No.2 in contravention of the very object of the gift and therefore, the suit property is liable to revert back to the petitioner but somehow, the afore-said relief as well as Para 5-A, as sought to be added in the relevant parts of the plaint by way of the proposed amendment, could not be incorporated in the original plaint whereas the same are material and necessary for the proper adjudication of the dispute between the parties. To buttress his contentions, he has placed reliance upon **South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors. 2008(4) Civil Court Cases 395 (SC), Navtej Singh vs. Darbara Singh & Ors. 2015(2) Civil Court Cases 148 (P&H), Nirmala Handa vs. Smt. Krishna Kaura (Now Deceased) Through Her Lrs. & Anr. 2015(2) Civil Court Cases 152 (Delhi HC), Sunil Gupta vs. Nargis Khanna 2015(3) Civil Court Cases 822 (Delhi HC), and Bhola Nath and Bros. Vs. New Delhi Municipal Committee Regular Second Appeal No.787-D of 1963 Decided on 08.01.1965 {Punjab High Court (Circuit Bench at Delhi)}**.

However, I do not find any merit in the afore-referred contentions because a perusal of the plaint Annexure P-1 reveals that the petitioner has sought therein the decree for declaration to the effect that the suit property is the property of respondent No.1-Trust by way of gift and he has, further, assailed the Sale Deed executed by the said Trust in favour of respondent No.2, on the ground of the said property being non-transferable but by way of the proposed amendment, he has prayed for adding the relief qua his own ownership over the suit property by way of its reversion on

account of the violation of the terms of the said gift on the part of the Trust and also Para 5-A in the plaint, containing averments to the same effect. Thus, it is explicit that the relief, as originally claimed in the plaint and the relief, as sought to be added therein by way of the proposed amendment, are mutually destructive being contradictory to each other. It is well-settled that the amendment in the pleadings, by way of adding mutually destructive inconsistent/contradictory pleas/reliefs/claims, is not permissible.

To add to it, the petitioner has not mentioned in the proposed Para No.5-A as to whether any gift deed had been executed by the donor, i.e his father, at the time of donating the suit property to respondent No.1-Trust or not and if so executed, then which part/clause/condition thereof has been violated by respondent No.1 by executing the said Sale Deed in favour of respondent No.2. Further, as categorically observed in the impugned order Annexure P-6, the said Civil Suit was filed in the year 2014 to challenge the Sale Deed dated 11.11.2013 whereas the afore-said application was moved by the petitioner in the year 2019. The petitioner has not been able to come forward with any fair, candid and plausible explanation for remaining in deep slumber for almost five years before moving the afore-said application.

The observations as made in **South Konkan Distilleries & Anr. (supra), Navtej Singh (supra), Nirmala Handa (supra), Sunil Gupta (supra)** and **Bhola Nath and Bros. (supra)**, are of no avail to the petitioner because the facts and circumstances of the above-cited cases are distinguishable from those of the present one because in **South Konkan Distilleries & Anr.(supra)**, the proposed amendment pertained to the addition of the amount intended to

be claimed on account of the loss suffered subsequent to the filing of the counter-claim wherein some amount had already been claimed on the same score and was, thus, consistent with the pleadings as set-forth the written statement-cum-counter claim whereas in this case, as discussed earlier, the petitioner intends to introduce a new relief on the basis of altogether different pleas which are not in consonance with his pleadings, as canvassed in original plaint.

Then, in **Navtej Singh (supra)**, the amendment was sought in view of the provisions as contained in Section 26 of the Specific Relief Act whereas it is not so in this case. Further, in **Nirmala Handa (supra)**, **Sunil Gupta (supra)** and **Bhola Nath & Bros (supra)**, the proposed amendment was not in contradiction to the pleas and the relief as initially set-forth in the pleadings whereas in the instant case, as mentioned earlier, the proposed amendment in the plaint is inconsistent with the original pleadings as put-forth in the plaint.

As a sequel to the fore-going discussion, it follows that the impugned order, as passed by the Court below, does not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court. Resultantly, the present revision petition, being *sans* any merit, stands dismissed.

28th March, 2022
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes