

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1411-2021 (O&M)
Date of decision: 22.08.2022

Onkar Singh

....Petitioner

Vs.

Mukhtiar Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Anantdeep Singh, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 26.02.2020 passed by the Addl. Civil Judge (Sr. Divn.), Gurdaspur, vide which application under Order 6 Rule 17 CPC filed by petitioner-defendant No.1 for amendment of his written statement, was declined.

Brief facts of the case are that respondent No.1-plaintiff filed a suit for declaration to the effect that he is owner in joint possession to the extent of 07 marlas of land comprising in Khewat No.24/25, Khatauni No.40, Khasra No.52/5/5 (2-18) and is owner of 04 kanals 06 marlas of land comprising in Khewat No.26/27, Khatauni No.41 & 42, Rect. No.6, Killa

Nos.7/2 (7-12), 8/1/2 (0-14), 8/3/2 (2-17), 12/3 (0-5), 13 (6-0), 8/1/1 (0-6), 8/3/1/ (0-10) as well as for a declaration that the sale deed dated 04.07.2013 executed by defendant No.1 in favour of defendant No.2 qua 16 marlas of land be declared as null and void and further for restraining defendant No.3 from alienating, mortgaging, disposing off or creating any type of third party interest over the suit property.

It is case set up by the plaintiff that earlier Kunan Singh, father of the plaintiff and defendants No.1 & 2 was owner in joint possession of the property and executed a sale deed dated 30.08.2000 in favour of the plaintiff and defendants No.1 & 2 in equal shares, therefore, they became joint owners in possession of the suit property. However, it is alleged that the defendants set up an exchange deed dated 23.12.2005, but later on, defendant No.1 resiled from the same and got the mutation sanctioned in his favour.

Petitioner-defendant No.1 filed the written statement, in which he made description of certain properties, which were given to the plaintiff in terms of the exchange deed. Thereafter, petitioner-defendant No.1 moved an application under Order 6 Rule 17 CPC to make the following averments: -

“4. That in para No.3 of the written statement clause-B is written inadvertently and due to typographical mistake whereas clause A was to be written in place of Clause-B.

Similarly in the beginning of 3rd line of para 10, the

word, “defendant” is written inadvertently and due to typographical mistake whereas actually word “plaintiff” was to be written in place of word “defendant” in the beginning of 3rd line of para No.10 of the written statement. Therefore, the plaintiff wants to amend the written statement as follow:

A. That the plaintiff wants to add the following lines in 8th line of para No.1 of the written statement after the word, “defendant No.1” and before the word “has”:-

“in 20/58 share i.e. 1 kanal land out of 2 kanal 18 marlas comprised in khasra No.52/5/5 (2-18), situated in the revenue estate of Village Lakhan Pal, Had Bast No.657 and about 7 marla area share of defendant No.1 in the house owned by Kunan Singh father of plaintiff as well as of defendant No.1 and 2 and after the proposed amendment, para No.1 of the written will be read as

“1. That para No.1 of the plaint is admitted to the extent that Kunan Singh father of the plaintiff and defendant No.1 and 2 was joint owner to the extent of 1 kanal out of property described in clause-A of the cause title of the plaint and he executed the sale deed dated 30.08.2020 in favour of the plaintiff and defendant No.1 and 2 in equal share. It is submitted that 7 marlas share of the defendant No.1 in 20/58 share i.e. 1 kanal land out of 2 kanal 18 marlas comprised in

khasra No.52/5/5 (2-18) situated in the revenue estate of Village Lakhan Pal, Had Bast No.657 and about 7 marla area share of defendant No.1 in the house owned by Kunan Singh father of plaintiff as well as defendant No.1 and 2 has been given to the plaintiff in exchange and 16 marlas share of the plaintiff of land measuring 4 kanal 6 marlas as mentioned in clause-B of the plaint was given to the defendant in exchange vide Exchange deed dated 23.12.2005. It is submitted that the plaintiff may get corrected the entries in the revenue record as per Exchange Deed dated 23.12.2005 and the defendant No.1 has no objection to it. The entries in the revenue record are correct and needs no reply.

B. Similarly the defendant No.1 wants to add the following lines in para No.3 of the written statement after the word “Khasra No.52/5/5 (2-18)” and before the word “was” in 15th line of this para: -

“alongwith area about 7 marlas share of defendant No.1 in the house owned by father of the plaintiff as well as of defendant No.1 and 2.”

C. Similarly the defendant No.1 wants to add the following line in para No.3 of the written statement after the word “defendant No.1” and before the word “which” in 27th line of para 3 of the written statement: -

D. Similarly the defendant No.1 wants to add the following lines para no.3 of the written statement after the word “land” and before the word “after” in 31st line of this para: -

“The area of house about 7 marlas which was given to the plaintiff vide above said Exchange Deed has been got sold by the plaintiff from Kunan Singh-father of the plaintiff and defendant No.1 to one lady namely Kajal”, and after the proposed amendment, the para no.3 of the written statement will be read as under:

“That the contents of para no.3 of the plaint are wrong and denied. It is wrong and denied that after execution of Exchange Deed dated 23.12.2005, the defendant No.1 subsequently resiled from the said Exchange Deed. It is also wrong and denied that defendant No.1 ever refused to give his 7 marla share to the plaintiff in compliance of the Exchange Deed dated 23.12.2005. It is wrong and denied that defendant No.1 ever denied to give 7 marla share as detailed in Clause-B of the title of the plaint. It is submitted that the Exchange Deed has been acted upon and is irrevocable document so there is no question of refusing or resiling from the said Exchange Deed by the defendant or even by the plaintiff. It is submitted that 7 marla share of defendant No.1 out of 1 kanal comprised in Khasra No.52/5/5 (2-18) alongwith area about 7 marlas share

of defendant no.1 in the house owned by father of the plaintiff as well as of defendant No.1 and 2 was given to the plaintiff and 16 marla share of plaintiff comprised in Khasra No.26/27, Khatauni No.40, 41, 43, Khasra No.6R/7/2 (7-12), 12/3 (0-5), 8/1/1 (0-6), 8/3/1/ (0-10), 13 (6-0), 6/1/2 (0-14), 8/3/2 (0-17), kitte 7 area 18 kanal 4 marlas out of which 4 kanal 8 marla out of which 0-16 marlas was given to the defendant no.1 vide Exchange Deed dated 23.12.2005 and on that basis mutation regarding the above said 16 marla land has also been sanctioned in the name of defendant No.1 and entries in this regard has also been incorporated in the jamabandi/revenue record in the name of defendant no.1. The 7 marlas share of the defendant No.1 in khasra No.52/5/5 which was given to the plaintiff in the above said exchange deed is still in possession of the plaintiff. The plaintiff has constructed his house over the said 7 marla and is in possession of that land. The area of house about 7 marlas which was given to the plaintiff vide above said Exchange Deed has been got sold by the plaintiff from Kunan Singh-father of the plaintiff and defendant No.1 to one lady namely Kajal. After execution of the exchange deed, the mutation of 16 marla land of the plaintiff was sanctioned in favour of the defendant No.1 on the basis of above said exchange deed and thereafter the defendant no.1 has

constructed his house over the said 16 marla land. The defendant No.1 thereafter has to shift to Gurdaspur due to his job reason so he had sold the said 16 marla land including the house constructed thereon to the defendant no.3 who is at present in possession of the said house/16 marla land and the plaintiff has no right to take back the said 16 marla land which was given to the defendant no.1 exchange vide Exchange Deed dated 23.12.2005, which has been fully acted upon the defendant no.1 and which is a irrevocable document.”

The said application was contested by respondent No.1-plaintiff and the primary objection was that after filing of the written statement, defendant cannot be permitted to withdraw the admission made in the written statement.

Thereafter, the trial Court, vide impugned order dated 26.02.2020, dismissing the application, primarily on the ground that it amounts to withdrawal of the admission.

Learned counsel for the petitioner has argued that proposed amendment is in terms of the written exchange deed and in the written statement, incorrect description of the land was provided, therefore, to make it in consonance with the exchange deed, which is signed by both the parties, proposed amendment is required.

Learned counsel for respondent No.1 has, however, submitted that exchange deed was never acted upon, therefore, proposed amendment

cannot be allowed. It is further submitted that cross-examination of all the plaintiff's evidence has already been done and he do not want to lead any fresh evidence in terms of the proposed amendment.

After hearing learned counsel for the parties and considering the fact that proposed amendment is not to withdraw the admission made in the written statement and rather the same is to bring the plea taken in the written statement in consonance with the exchange deed, set up by defendant No.1 and the trial Court should have allowed the application.

Accordingly, this petition is allowed and the impugned order dated 26.02.2020 is set aside, subject to payment of costs of Rs.10,000/- payable to plaintiff.

Since the amendment is allowed at a stage, when the case is fixed for defendants' evidence, the trial Court, after allowing amendment in the written statement, will allow respondent No.1-plaintiff to file his fresh replication and further grant opportunity to lead the evidence in affirmative.

Liberty is also granted to respondent No.1-plaintiff to lead rebuttal evidence to the issues, which may be re-drafted, after the amendment is allowed, onus of which is/are on the defendants.

[ARVIND SINGH SANGWAN]
JUDGE

22.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No