

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

CR 4923/2019

Date of decision: 08.12.2022

Sanjeev Kumar Jindal @ Tony

.....Petitioner

Vs.

Raksha Devi and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajan Bansal, Advocate for the petitioner/defendant.
Mr. PKS Phoolka, Advocate for the respondents/plaintiffs

Nidhi Gupta, J.

Prayer in this revision petition is for setting aside the order dated 11.7.2019 (Annexure P-8) passed by Civil Judge (Junior Division), Bathinda whereby the application moved by respondents/plaintiffs under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint has been allowed.

Brief facts of the case are that the respondents/plaintiffs filed a suit dated 9.10.2015 for declaration to the effect that the plaintiffs and proforma defendant 6/ respondent no.9 herein, are owners in possession of the suit land as described in the head note of the plaint, and for declaration to the effect that mutation No. 6553 sanctioned in favour of defendant no.1 on the basis of alleged Will dated 30.6.2006 and all other subsequent revenue entries on the basis of mutation no.6553 are null and void. The petitioner/defendant contested the suit and filed written statement dated 20.11.2015 inter alia stating that: -

“7. That the suit of the plaintiffs is not within limitation, as the answering defendant no.1 had purchased the land measuring 106.66 square yards out

of the suit land vide registered sale deed no. 6013 dated 29.7.2005 and remaining portion was owned and possessed by the answering defendant no.1 vide registered Will No. 377 of 29.7.2005 and is in possession on the same since the date of purchase and in remaining portion since the death of Panna Devi as such plaintiff had no right, entitlement, concern with the suit property and from that date answering defendant is in continuing, open, hostile, uninterrupted, to the knowledge of all concerned, is in possession of the above said land purchased as mentioned above, hence suit in hand is hopelessly time barred and is liable to be rejection on this score alone”.

Pursuant to the aforesaid facts revealed by the petitioner/defendant in their written statement the respondents/plaintiffs filed the first amendment application under Order 6 Rule 17 CPC dated 18.12.2015 (P-3) wherein amendment of the above said civil suit to the following effect was sought: -

“Para in head note of the plaint:

Suit for declaration to the effect that sale deed no. 6013 dated 29.7.2005 and mutation no.6307 which is sanctioned on the basis of above said sale deed and all other subsequent revenue entries on the basis of said sale deed and mutation, is null and void and not operative on the rights of the plaintiffs.

Para No.7A in the body of the plaint:

7A) That defendant no.1 has been succeeded in getting the ownership of the land measuring 0K-3-1/2M from Panna Devi through sale deed No.6013 dated 29.7.2005 and on the basis of which mutation no.6307 is sanctioned by the revenue authorities in favour of defendant no.1 and further the ownership of the remaining land i.e. land measuring 0K-3-1/2M was transferred on the name of defendant no.1 through Will No.377 dated 29.7.2005. The above said sale deed No.6013 dated 29.7.2005 and mutation No.6307 and all other subsequent revenue entries on the basis of said sale deed and mutation are null and void and not operative on the rights of the plaintiff as the same is product of fraud played by the defendant no.1 and 2 and the above said Panna Devi. As in the family settlement, Panna Devi has already left her interest in the suit property in the year 1995-96, then she was not entitled to alienate the suit property through the

above said sale deed as well as through Will. On the date of alleged sale deed, the suit property was vesting in defendant no.2 and Rajinder Parshad and not in Panna Devi on the basis of family settlement. Although, the share in the suit property claimed by the plaintiffs is fully covered in the land which is allegedly acquired by the defendant No.1 through above said Will but, in order to avoid any complication, the plaintiffs also challenge the above said sale deed No.6013 dated 29.7.2005 and the mutation No.6307 which is sanctioned on the basis of above said sale deed and all other subsequent revenue entries which are incorporated on the basis of above said sale deed and mutation of sale.

Para in the prayer clause:

It is further prayed that sale deed no.6013 dated 29.7.2005 and the mutation no.6307 and all other subsequent revenue entries on the basis of above said sale deed and mutation may also be declared null and void, not operative on the rights of the plaintiffs.”

This amendment application was allowed by the Trial Court vide order dated 26.2.2018 (Annexure P-5).

However now, the respondents/plaintiffs have again filed present application under Order 6 Rule 17 CPC dated 31.5.2019 (P-6) seeking amendment of their plaint to the following effect: -

“In the Head note of the plaint: *AND for declaration to the effect that alleged Will No. 377 dated 29.7.2005 is a forged and fabricated document created by defendant no.1 in connivance with witnesses of the Will as well as officials of the revenue department.*

By way of addition of Para No.7(ii-a) of the plaint: *That alleged Will No. 377 dated 29.7.2005 is a forged and fabricated document created by defendant o.1 in connivance with witnesses of the will as well as officials of the revenue department. Smt. Panna Devi never executed and registered the alleged Will during her life time.*

In the prayer clause: *It is further prayed that declaration ay also be passed to the effect that alleged Will No.377 dated 29.7.2005 is a forged and fabricated document created by defendant no.1 in connivance with witnesses of the Will as well as officials of the revenue department.”*

By way of impugned order dated 11.7.2019 the learned trial court has allowed the above said amendment which has now been challenged by the petitioner/defendant by way of present revision petition.

Learned counsel for the petitioners vehemently submits that in the first instance from the reading of the plaint Annexure P-1 it is evident that the date of the Will is incorrectly mentioned in the plaint as 30.6.2006. Upon the correct facts being pointed out by the petitioner/defendant in their written statement (Annexure P3) as noticed above, respondent/plaintiff filed first amendment application dated 18.12.2015. However, the respondent/plaintiff vide this application sought amendment only in regard to the registered Sale Deed No.6013 dated 29.7.2005 and omitted to mention Registered Will No.377 dated 29.7.2005. It is submitted that now by way of the second/ present application under Order 6 Rule 17 CPC the plaintiffs are seeking to improve their case by amending their plaint yet again to include challenge to the Registered Will No. 377 dated 29.7.2005 as well. It is submitted by the Id. counsel for the petitioner that this cannot be permitted and trial Court is in grave error in allowing this application inter-alia, on the ground that the same was barred by limitation, being beyond the stipulated period of three years. It is stated that the petitioner had filed the written statement in the civil suit on 29.11.2015 whereby both the above-mentioned sale deed no. 6013 and registered Will No.377 both dated 29.7.2005 had come to the knowledge of the respondents/plaintiffs. Despite that, this amendment application has been filed beyond period of three years on 31.5.2019. As such, this application is not maintainable being time barred. In making these submissions, learned counsel relies upon **Kumud Bhargava v Sudhir Bhargava and others Law Finder doc id # 632192; Surjit Kaur (since deceased) through her LRs v Sukhdev Singh and others Law Finder Doc Id # 1340445; Smt. Seema thakur v Union of India and others,**

Law Finder doc Id # 715550; Gian Chand v Bimal Kumar, Law Finder Doc Id # 400816; and Vijay Singh v Savitri Devi, Law Finder Doc Id # 354570.

Per contra, learned counsel for the respondents/plaintiffs submits that no doubt there was a bona fide error on the part of the respondents as they inadvertently laid challenge only to the Mutation No.6533 which was sanctioned on the basis of Will No.377 dated 29.7.2005 but did not challenge the aforesaid Will. It is submitted that the date of the Will is incorrectly mentioned as 30.6.2006 instead of correct date 29.7.2005 due to typographical mistake. It is further submitted that in relation to petitioner's argument regarding limitation it is submitted that it is open to the trial Court to frame an issue to this effect and return a finding on the same.

I have heard learned counsel for the parties.

It is not in dispute that the proceedings in the civil suit are at an initial stage wherein though issues have been framed but no witnesses have yet been examined by the plaintiffs. Moreover, it is not in dispute that if the impugned order is set aside then great prejudice would be caused to the respondents-plaintiffs as also there would be no proper adjudication of the dispute at hand. In my view the amendments sought are technical in nature and will not cause any prejudice to the petitioner or change the nature of the suit in any manner. Accordingly, this revision petition is dismissed subject to payment of Rs.10,000/- as costs to be paid by the respondents to the petitioner within a period of two months from today.

(Nidhi Gupta)
Judge

08.12.2022
Joshi

Whether speaking/reasoned
Whether reportable

Yes
Yes/No