

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-391-2023 (O&M)

Date of decision: January 20, 2023

Parveen Kumar

...Petitioner

versus

Inder Pal Singla

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

CM-1093-CII-2023

For reasons stated in the application, same is allowed as prayed for, subject to all just exceptions.

Main case (O&M)

Present revision petition is to set aside impugned order dated 13.12.2022 (Annexure P-7) passed by learned Civil Judge (Junior Division), Patiala whereby in a suit instituted by respondent-plaintiff for separate possession by way of partition, application dated 31.08.2022 (Annexure P-5) under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure, 1908 filed by defendant-petitioner for amendment of written statement dated 10.08.2017 (Annexure P-2), was dismissed.

2. Learned counsel for the petitioner-defendant, *inter alia*, contends that reasons given by learned trial Court while rejecting the application for amendment of written statement filed by petitioner-defendant are misconceived. No injustice/ prejudice will be caused to plaintiff. The matter is

still at the stage of evidence of defendant and he is not going to lead any further evidence keeping in view the scope of amendment.

3. Given the nature of order being passed, there is no necessity to issue notice to the respondent-plaintiff, as no prejudice would be caused to him. Notice to the respondent is thus dispensed with.

4. Heard.

5. The proposed amendment of written statement is as under:-

- “i). That at the end of para No.1 (on merits) of the written statement, following may be allowed to be added as under:-
“That the suit property i.e. KHOLA in a dilapidated condition was agreed to be sold for a sum of Rs.91,000/- as per the agreement to sell also dated 16.01.1992, original Mark D-1 already produced on the file of the case, executed by the vendor prior to the sale deed at house situated at Misri Bazar, Patiala by entering the name of the defendant and plaintiff in the above agreement, through the amount of Rs.30,000/- as earnest money was paid by the defendant and the remaining sale consideration was also paid by the defendant only to the vendor, out of which Rs.30,600/- was paid by the defendant through Bank Draft got prepared from PNB, Gur Mandi, Patiala against cash amount deposited in the said account by the defendant and the remaining was paid in cash. Even, the deficiency in stamp duty as demanded by the Registration Office was also paid by the defendant only, who was present at the time of the sale deed and signed the sale deed as purchaser and the plaintiff was not even present at the time of execution and registration of the sale deed. Ravinder Singla at whose instance the name of the plaintiff was got entered in the sale transaction is also signatory to the above agreement to sell executed on 16.01.1992 Defendant as sole owner has alone been paying the house tax since 1992 and property tax since 12/13 up to date and electricity charges and landline phone charges of landline numbers 71934 and 226632 (which is still running) installed in the shop in dispute.”
- ii) That in para No.2 (on merits) of the written statement, following may be allowed to be added at the end of this para:-

“The shop in question on the ground floor of the suit property was constructed in the beginning of 1996 by the defendant by raising funds for its construction and the photostat copy of the permit issued by the M.C., Patiala sanctioning construction of new shop as per site plan No. 724/24.01.1996, for which, amount of Rs.2625/- was deposited on 24.01.1996 by the defendant. Defendant has not been able to trace out the above original documents, though, the file of sanctioning the above site plan might be in record of the Municipal Corporation, Patiala. This site plan was applied in the joint name of the plaintiff and defendant as per the sale deed dated 16.01.1992.

The first floor of the suit property i.e. two rooms, one kitchen and one bathroom, were constructed by the defendant for him and his family being in need thereof, over the shop in dispute in the year 2007 and an amount of Rs. 1.00 Lakh was spent on this construction by the defendant only out of the loan amount of Rs.1.00 Lakh further extended to Rs.3.00 Lakh raised from the then State Bank of Patiala, Chowk Fort Branch, Patiala in the name of Jai Durga Trading Company, Proprietorship of the defendant.

The Water and Sewerage connection was also obtained for the aforesaid first residential floor by the defendant in the year 2007, though because of the sale deed dated 16.01.1992 it was obtained in the joint name of the plaintiff and defendant, but the plaintiff never resided in the first floor nor it has been claimed so by him in the present suit.

The above fact of year of construction of the ground floor shop and later first floor as described above on obtaining of the water and sewerage connection has been intentionally concealed by the plaintiff. Even, plaintiff cleverly did not plead the writing dated 10.09.2014 in the plaint and even in the rejoinder also has simply stated it to be an admitted writing of the defendant, whereas, in the examination in chief while tendering his affidavit, plaintiff has stated it to be as Deed of Partition dated 10.09.2014 and produced its photostat copy as Ex.P-3, which is inadmissible containing wrong recitals. The plaintiff has also produced site plan Ex. P-4 as part of Ex.P-3, though, this site plan Ex.P-4 depicts the correct dimensions and total area as 43 Sq. Yards. Division of the shop has also been wrongly shown in Ex. P-4 by drawing imaginary lines, though the shop in dispute is impartible. It has been got done intentionally to claim partition of the shop in dispute,

which cannot be divided as it will render the shop in dispute useless not having sufficient and reasonable space for running the karyana business therein admittedly being run by the defendant since beginning i.e. since construction of the ground floor shop in the suit property by the defendant at his own costs. The entire suit property having been constructed as such by the defendant at his own costs is also being maintained/ improved by the defendant, as such by spending all requisite amounts on the suit property running into lakhs of rupees till today without any sort of contribution by the plaintiff in the same at any time. Plaintiff having not come to the court with clean hands and being guilty of concealment and suppression of facts and documents i.e. alleged Deed of Partition and its site plan marked as Ex.P-3 and Ex.P-4 from the Hon'ble Court by filing the present suit and thus, plaintiff is not entitled to any relief and the suit is liable to be dismissed. Mala fide on the part of the plaintiff is also clear from the fact that the plaintiff has interpreted the alleged Deed of Partition dated 10.09.2014 and its site plan marked as Ex.P-3 and Ex.P-4 as suitable to him with different interpretations at different places as is apparent from the record of the case, and thus, as per the settled law, a party approaching the Court with un-clean hands, though, the suit property cannot be reasonably or otherwise partitioned, but as per the aforesaid document dated 10.09.2014 and its site plan marked as Ex.P-3 and Ex. P-4 speaking of complete partition/ separation having taken place between the parties, suit was filed vide plaint dated 01.04.2016, for partition by separate possession by the plaintiff is not maintainable and liable to be dismissed. There is no question of any mesne profits payable by the defendant to the plaintiff as claimed in the plaint or otherwise.”

6. In my opinion, the amendment sought will not change the overall stand of the defendant-petitioner. For delay the other party can be compensated by costs.

7. In view of this and the aforesaid statement of learned counsel for petitioner-defendant, the revision petition is allowed, subject to payment of

costs of Rs.10,000/- payable to plaintiff-respondent. Petitioner-defendant be given one opportunity to amend the written statement, as aforesaid.

8. It is, however, made clear that by virtue of the amendment of written statement, petitioner-defendant shall not be allowed to examine any additional witnesses other than the witnesses whose name have been already given before learned trial Court. On a Court query, learned counsel for petitioner-defendant submits that evidence has still not been closed and the examination of defendant (petitioner herein) is going on. Being so, I am of the view that no prejudice would be caused to the plaintiff-respondent since learned counsel for the petitioner-defendant undertakes that he will not seek opportunity to examine any additional witness.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No