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

CR-5042-2018 (O&M)

Date of Decision: 18.05.2023

Maninder Pal Singh

....Petitioner

Versus

Manjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Himanshu Puri, Advocate
for the petitioner.

Mr. Yogesh Jangra, Advocate
for Mr. Sherry K. Singla, Advocate
for respondent No.2.

Mr. Abhishek Singla, Advocate
for respondent No.19

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 18.07.2018 (Annexure P-9) passed by Ld. Civil Judge (Jr. Divn.), Talwandi Sabo, whereby application filed by petitioner/plaintiff under Order 6 Rule 17 CPC read with Order 1 Rule 10 CPC, seeking amendment of plaint, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for declaration that plaintiff and respondent No.1 are owner in joint possession of 1/3rd share of the suit property measuring 485 Kanals 9 Marlas being co-sharers and respondent

No.1 is entitled to get the entry of ownership of above mentioned land along with plaintiff corrected in the revenue record and respondent/defendants No.9 to 15 have got no right, title in the suit property, on the basis of judgment and decree dated 8.2.2000 and further that sale deed dated 22.4.2013, executed by respondent/ defendant No.9 in favour of respondent/defendant No.15 is illegal, null and void and is not binding on the rights of plaintiff and is therefore, liable to be set-aside.

2.2. Respondent/defendant No.2 filed a separate written statement and contested the suit filed by plaintiff. Respondent/defendant No.15 also filed separate written statement (Annexure P-2) and pleaded that he is owner in possession of the land measuring 13 Kanals 9 Marlas as per sale deed dated 22.4.2013.

2.3. Ld. Trial Court framed the issues arising from the pleadings of the parties. Petitioner/plaintiff thereafter examined the witnesses in support of his case and also produced on record the documentary evidence. Defendants also examined their witnesses and accordingly, the evidence of defendants was closed on 18.10.2014. Suit was then fixed for final argument.

2.4. Meanwhile, respondent/defendant No.15 filed application dated 14.5.2015 (Annexure P-3) for producing on record copy of judgment dated 21.5.2002 by way of additional evidence.

2.5. Petitioner herein contested the said application by filing reply (Annexure P-4), wherein it was submitted that the said evidence cannot be allowed.

2.6. Ld. Trial Court, however, vide order dated 16.9.2015 (Annexure P-5), allowed the application filed by respondent/defendant No.15 for leading additional evidence and accordingly, the case was fixed for leading additional evidence by respondent/defendant No.15.

2.7. Respondent/defendant No.2 also filed application for setting aside the *ex parte* proceedings before Ld. Trial Court. Said application was dismissed by Ld. Trial Court vide order dated 2.11.2015. Respondent/defendant No.2 preferred a revision petition before this Court bearing CR No.7712 of 2015 wherein this Court vide order dated 19.11.2015 (Annexure P-6) passed interim order in favour of respondent/defendant No.2.

2.8. This Court vide order dated 17.5.2018 accepted the said revision petition and respondent/defendant No.2 was permitted to appear before Ld. Trial Court and to file written statement. Since, the proceedings before Ld. Trial Court were stayed by this Court in CR No.7712 of 2015, therefore, petitioner/plaintiff could not file the said application for amendment of plaint.

2.9. Petitioner/plaintiff after passing of order dated 17.5.2018 by this Court in CR No.7712 of 2015, preferred application (Annexure P-7) under Order 6 Rule 17 read with Order 1 Rule 10 CPC, for amendment of plaint to state that the judgment/order dated 10.9.2000 vide which the suit was dismissed in default had been passed in absence of plaintiff. However, vide impugned order (Annexure P-9), Ld. Trial Court dismissed the said application. Hence the instant petition.

3. Learned counsel for petitioner would argue that Ld. Trial Court has committed a manifest error in law while passing the impugned order as it has been held by the Supreme Court in a catena of judgments that amendment in the pleadings is to be allowed in order to avoid the multiplicity of litigation and for the proper adjudication of the case. Further, perusal of written statement filed by respondent/defendant No.15 would show that he has nowhere pleaded about passing of judgment dated 21.5.2002 in Civil appeal No.18 and a perusal of the said judgment dated 21.5.2002 would show that it was an *ex parte* judgment which had been passed at the back of petitioner/plaintiff.

4. I have heard learned counsel for parties and have perused the case file carefully.

5. Controversy involved herein is summed up in order dated 07.08.2018, passed by a Coordinate bench of this Court, presided over by B.S. Walia, J. (as he then was seized of the matter) in the following terms:

“Learned counsel contends that civil suit on the basis of judgment and decree passed by the learned Civil Judge (Jr. Divn.), Talwandi Sabo was filed in the year 2013 and in the year 2015 the respondent/defendant No.15 filed an application for additional evidence for placing on record order dated 21.05.2002 passed by the Court of the learned Additional District Judge, Bathinda remanding the case to the learned Civil Judge (Jr. Divn.), Talwandi Sabo against the judgment and decree dated 08.02.2000 without issuing notice to the petitioner. Suit was dismissed on 10.09.2002, by the learned Civil Judge (Jr. Divn.), Talwandi Sabo, but no notice was issued to the petitioner at any point of time either by the learned Addl. District Judge, Bathinda or the learned Civil Judge (Jr. Divn.), Talwandi Sabo before remanding/dismissing the suit in default. The petitioner filed application for amendment of plaint to incorporate the aforementioned aspects of the matter as also of not having been served in the said proceedings before passing of order dated 10.09.2002 immediately on coming to know about the factual position from

the application for additional evidence moved by respondent/defendant No.15. Learned counsel contends that no doubt the application was moved in the year 2018 but the same could not have been moved earlier after coming to know about the factual background in the year 2015 due to stay of proceedings of the civil suit by this Court, therefore, the dismissal of the application on the ground that the petitioner had failed to convince the Court that he was not having any knowledge regarding dismissal of the above suit on 10.09.2002, is legally unsustainable.

Notice of motion for 13.08.2018.

Notice regarding stay as well.

Dasti only.

Liberty to effect service on the respondent through counsel representing him before the learned trial Court.

To be shown in the urgent list.”

6. *Apropos*, the matter was heard on 13.08.2018, when further proceedings before Ld. Trial Court were stayed. Present revision petition has been pending before this Court ever since for effecting the service upon respondents which are as many as 23 of them. Some of them are still unserved.

7. I am of the view that service upon unserved respondents can be dispensed with to avoid any further delay in disposal of revision petition. Ordered accordingly.

8. Further, having seen the contents of application (Annexure P-7) wherein the proposed amendment was sought to be made, which was dismissed vide impugned order, I am of the view that proposed amendment would not in any way change the nature of suit or the relief sought therein; neither are the proposed amendments barred under limitation. Further, a perusal of para No.7 of the application reflects that plaintiff wishes to rely upon certain Court orders and the pleadings filed therein in some previous

proceedings instituted *inter se* parties, which do carry a presumption of correctness as mandated by Section 80 of the Indian Evidence Act, 1872.

9. In the premise, proposed amendment(s) are allowed subject to the caveat that consequent upon amendment of plaint, petitioner/plaintiff shall be given only one effective opportunity and he shall be permitted to produce only documentary evidence and that too certified copies of record of Courts below, on which he wishes to rely and as are *per se* admissible documents. However, it is made clear that no further opportunity to produce any other evidence shall be granted.

10. Disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 18, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No