

C.R.No.8337 of 2018 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.104+240

Case No. : C.R.No.8337 of 2018 (O&M)

Date of Decision : July 05, 2023

Bhai Ashok Singh Petitioner
vs.
Bhai Dilawar Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Anil Kumar Garg, Advocate
for the petitioner.

Mr. Mohan Singh Chauhan, Advocate
for respondent no.1.

* * *

GURBIR SINGH, J. :

1. **C.M. No.5472-C-II-2022** - This is application under Section 151 CPC for placing on record reply on behalf of respondent no.1 along with Annexures R-1/1 to R-1/3. For the reasons mentioned in the application, the same is allowed and reply on behalf of respondent no.1 along with Annexures R-1/1 to R-1/3 are ordered to be taken on record. The application stands disposed of.

2. **Main Case** - Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 29.11.2018 (Annexure P-5), passed by learned Civil Judge (Junior Division), Malerkotla, whereby application dated 12.11.2018 (Annexure P-3), filed by the petitioner, for amendment of written statement, has been dismissed.

3. Learned counsel for the petitioner submits that respondent no.1

filed a suit for permanent injunction against the petitioner, who is his father (defendant no.5 in the suit) and other family members, for restraining them from dispossessing or interfering in his peaceful possession over House No.425, measuring 4750 sq. yds., with boundaries mentioned therein, situated at Village Bagrian, Tehsil Malerkotla, as per the site plan.

4. The petitioner (defendant no.5 in the suit) filed written statement. An application was moved that during pendency of the case that it came to the knowledge of defendants no.5 and 6 that earlier also, the plaintiff (respondent no.1 herein) filed a suit for declaration bearing **Suit No.1 of 12.09.2001** titled **Bhai Dilawar Singh vs. Bhai Jujhar Singh and others** regarding suit property and other properties. The said suit was dismissed by the then District Judge, Sangrur, vide judgment and decree dated 03.10.2006. So, the present suit of the plaintiff was barred under Order 2 Rule 2 CPC. The plaintiff contested the application on the ground that the parties to the second suit were different and the cause of action to file both the suits were also different.

5. Learned Trial Court, vide order dated 29.11.2018 (Annexure P-5), dismissed the application holding that parties to the present suit were totally different from the parties to the earlier suit, decided on 03.10.2006 by the Court of the then District Judge, Sangrur. It was also held that the earlier suit was a declaration suit whereas the present suit was simplicitor suit for permanent injunction.

6. Learned counsel for the petitioner has argued that plaintiff in the present case is seeking injunction by claiming that he is in possession of

the suit property as owner whereas he has already lost a suit for declaration regarding the same property. The learned Trial Court failed to take into consideration the Trust Deed dated 28.03.1972, wherein it was specifically stipulated that as both the sons namely Bhai Ashok Singh and Bhai Sikander Singh were executants of Trust and their residences were in the Qila property, their heirs would have right to live in the portions, in which they were living.

7. Learned counsel for respondent no.1 has opposed the prayer made by learned counsel for the petitioner. He has argued that the earlier suit was only for declaration, rendition of accounts, removal of Trustee and for permanent injunction. The copy of judgment dated 03.10.2006 passed in that suit is Annexure P-6. The petitioner was not party to that suit. The parties were different. The said suit was dismissed. The petitioner has sought to take plea of Order 2 Rule 2 CPC. The proposed amendment is not necessary at all. The amendment which is not necessary cannot be allowed.

8. Heard.

9. Since the instant case is filed simply for permanent injunction and for protecting the possession and the application for amendment is with regard to taking the plea of Order 2 Rule 2 CPC. The parties in the earlier suit were different. So, the proposed amendment is not necessary for just decision of the case. The amendment of pleadings can only be allowed if the said amendment is necessary for just decision of the case. Since the proposed amendment is not necessary at all, so the learned Trial Court has passed the impugned order dated 29.11.2018 (Annexure P-5) in accordance

with law.

10. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed, with no order as to costs.

11. Pending applications, if any, shall stand disposed of along with this judgment.

July 05, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.