

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

CR-8687-2017(O&M)

Date of decision:-19.1.2023

Ajit Kumar

...Petitioner

Versus

Ashwani Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.K.S. Derabassi, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 18.11.2017 passed by Civil Judge (Jr.Divn.), Dera Bassi vide which an application under 6 Rule 17 CPC filed by the plaintiff seeking amendment of plaint has been allowed. The defendant, who is revision petitioner before this Court prays that the revision petition be accepted, the impugned order be set aside and application seeking amendment of the plaint be dismissed.

2. Briefly stated, facts of the case are that plaintiff Ashwani Kumar and others had filed a suit against defendant Ajit Kumar seeking a declaration that the conveyance deed dated 28.9.2011 is illegal, null and void not conferring any right upon the defendant besides seeking separate possession by way of partition of the suit land.

3. On getting notice, the defendant appeared and contested the suit. During the course of proceedings, an application for amendment of

the plaint was filed by the plaintiff stating that there is another conveyance deed of the same date i.e. 28.9.2011, which needs to be challenged but was not within the knowledge of the plaintiff and he came to know about it only when the defendant had led his evidence necessitating seeking of amendment of plaint to challenge the other conveyance deed of the even date.

4. According to the plaintiff, he has already mentioned the total land in the plaint which is the subject matter of both the conveyance deeds, however, in the written statement, the defendant had not specified that there were two conveyance deed of the same date, as such the other conveyance deed of the same date could not be challenged by the plaintiff in the suit.

5. Though the application was resisted by the defendant tooth and nail but it was allowed by the trial Court vide the impugned order. For ready reference, the operative part of the order is reproduced as under:

Hence, no doubt the present application has been filed when the case going on for defendant evidence. But in my view since the amendment is only with regard to challenging the another conveyance deed of the same date i.e. 28.9.2011 copy of which brought on record by the defendants during his evidence, then in order to avoid the multiplicity of litigation and to decide the present matter with regard to both the conveyance deed, I am of the view that in order to decide the matter effectively by taking into consideration evidence to both the conveyance deed, the present application is liable to be allowed for the amendment as sought for.

So far as the delay part is concern which has occurred in filing the present application that can be well compensation by way of imposition of cost. Defendant shall have also the right to file the amended written statement if any. Accordingly the present application is hereby allowed subject to payment of Rs.2,500/- as cost.

6. I have heard learned counsel for the revision petitioner besides going through the record and I do not find any element of perversity or arbitrariness in the impugned order, rather the same comes out to be legal and valid.

7. The trial Court has exercised the discretion in a judicious manner and no fault can be found with the same. Valid reasons for passing the orders have been given and I do not see any reason to disagree with the same. Therefore, no ground is found to be there to interfere with the impugned order by exercising the revisional jurisdiction.

8. Finding no merit in the revision petition, the same stands dismissed. As such, the interim order passed in this case on 12.12.2017 that proceedings in the trial Court be deferred to a date beyond the date fixed before this Court comes to an end.

The Court concerned be informed accordingly.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

19.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No