

[102] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-9058-2017

Date of Decision : 11.04.2023

Ami Lal

...Petitioner

versus

Gurvinder and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sandeep Kumar Yadav, Advocate for the petitioner.
Mr. Sanjay Mittal, Advocate for the respondents.

B.S. Walia, J. (Oral)

[1] Prayer in the petition is for setting aside order dated 25.09.2017 passed by the learned Civil Judge (Junior Division), Narnaul whereby, the application filed by the respondent-plaintiff under Order 6 Rule 17 CPC was allowed.

[2] Learned counsel contends that civil suit (Annexure P-1) was filed by the petitioner's brother Gurvinder with the following prayer:-

“ Suit for Partition of Land bearing Khewat No.90 Khatauni No.118//27 34 (1-1) 28 144 (0-2) 15/3 16/1 11/2 20/1 0-2 1-12 0-9 3-16 1-11 Total Kitta 6 Land Measuring 8 Kanal 12 Marla area of Village Uneenda Tehsil Narnaul as per Jamabandi for the year 2011-12 and Transfer of Immovable Property Deed dated 13-08-2014. ”

[3] That an application moved for amendment of the plaint to delete Killa No.28//11/2 and 20/1 was allowed on the ground that

although the suit was for partition of the land as mentioned in the head note of the plaint including the constructed portion on said land, no house had been constructed on the aforesaid killas. Learned trial Court by taking into account the Local Commissioner's report that houses were not constructed in the aforementioned killa numbers allowed the respondent-plaintiff to withdraw part of the suit land vide order (Annexure P-4) dated 11.07.2017.

[4] Learned counsel contends that after one month thereafter, another application under Order 6 Rule 17 CPC was filed by the respondent-plaintiff to amend the plaint to include Killa No.27//15/3 land measuring 0-7 Marla and Killa No.16/1 Area 0-9 Marla and 28//11/2 Area 0-4 Marla and 20/1 Area 0-6 Marla in the head note while deleting the remaining area from point No.1 and point No.10 of the suit.

[5] Learned counsel contends that perusal of order (Annexure P-4) reveals that the respondent-plaintiff was allowed to amend his plaint so as to delete reference of Killa No.28//11/2 and 20/1 vide order (Annexure P-4) dated 11.07.2017, therefore, the subsequent application dated 23.08.2017 filed one month after the passing of order (Annexure P-4) inter alia for addition of Killa No.28//11/2 Area 0-4 Marla and 20/1 Area 0-6 Marla in the head note was not permissible, as it was not open to the respondent-plaintiff to blow hot and cold after initially having got the said area deleted on the basis of report of Local Commissioner and subsequently seeking amendment of the plaint for including of the very same area including other areas.

[6] Learned counsel further contends that impugned order dated 25.09.2017, allowing the application vide order dated 25.09.2017 is bereft of reasons, therefore, liable to be set aside.

[7] Learned counsel for the respondent concedes that there is no reasoning given in the impugned order for allowing the application for amendment so as to include Killa Nos.28//11/2 and 20/1 in the plaint again after permission to delete the same vide order (Annexure P-4) dated 11.07.2017. for the reasons mentioned above, the impugned order is legally unsustainable and is accordingly set aside.

[8] At this stage, learned counsel for the respondent contends that the matter be remanded to the learned trial Court to decide to the application afresh. Needless to mention, it would be open to the respondent to take out appropriate proceedings in accordance with law *qua* the exclusion of Killa Nos.28//11/2 and 20/1, which he contends was wrongly ordered vide Annexure P-4.

[9] Needless the mention, since the suit is of the year 2015 and learned counsel for the parties state that even issues have not been framed till date, learned trial Court is directed to take steps to decide the civil suit in accordance with law as expeditiously as possible.

(B.S. Walia)
Judge

11.04.2023
'Rajneesh'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No