

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

CR-1079-2019(O&M)

Date of decision:-25.1.2023

Pala Khan @ Pale Khan

...Petitioner

Versus

Avtar Singh and another

...Respondents

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

Present: Mr.Aakash Singla, Advocate
for the petitioner.

Mr.Himanshu Puri, Advocate for
Mr.Sunny K. Singla, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that plaintiff Avtar Singh had brought a suit against defendant Pala Khan @ Pale Khan son and Smt.Dhanno wife of Sadi Mohammad, both residents of village Asdullapur (Baurhai Khurd), Tehsil Malerkotla, District Sangrur seeking possession by way of specific performance of agreement to sell dated 6.7.2011 as well as writings dated 15.3.2012, 19.4.2012 and 23.10.2012 with regard to 7 bighas, 4 biswas and 4 biswasi of land along with share of canal water and other appurtenant rights, such land being situated at village Bheekhampur, Tehsil Malerkotla, District Sangrur on payment of total sale consideration of Rs.34,60,800/- on adjusting amount of Rs.19,00,000/- paid as advance money by the plaintiff to the defendants and in the alternative suing for recovery of Rs.34,00,000/- i.e. Rs.19,00,000/- paid as advance money by the plaintiff to the defendants and Rs.15,00,000/- as damages, besides craving for grant of permanent

injunction restraining the defendants from alienating the suit land in any manner to anybody else except the plaintiff.

2. On getting notice, defendant No.1 had put in appearance and contested the suit. During the course of proceedings, the plaintiff had filed an application under Order 6 Rule 17 CPC seeking amendment of the plaint contending that defendants have prepared a false memo of oral gift dated 10.5.2010 and got instituted a Suit No.126 dated 26.10.2016, which was decreed on 10.1.2019; in that suit they had not impleaded the plaintiff and the plaintiff came to know about that decree on filing of written statement by the defendants necessitating the amendment of plaint to implead Shamshad and Sabar minor sons of Pale Khan through their mother Rubia as defendants No.3 and 4, with consequential amendment in the head note of the plaint.

3. That application was vehemently contested by the defendant No.1 denying that Suit No.126 dated 26.10.2016 was collusive, further submitting that Shamshad and Sabar have no right, title or interest in the suit property, both of them through their mother had earlier filed an application under Order 1 Rule 10 CPC for impleading themselves as defendants in the suit, however that application was dismissed because the plaintiff had opposed the same vehemently and therefore, is estopped from moving a similar application, subsequently, therefore the application be dismissed.

4. After hearing the rival contentions, the trial Court vide the impugned order dated 2.2.2019 had allowed that application. For ready reference, the operative part of the order is being reproduced as under:

4. *This court has heard rival submissions made by counsel for the applicant/defendant, as well as that of respondent/plaintiff and have gone through the material placed on record meticulously. After hearing both the sides, this court is of the considered view that the purpose and object of order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and as such terms as many be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guide lines laid down by the various High Courts and Hon'ble Apex court of the Country. It is true that the amendment cannot be claimed as a matter of Right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule, Technicalities of law should not be permitted to hamper the Courts in administration of justice between the parties. This court is of the view that the plaintiff has sought the amendment on the ground that in order to defeat the rights of the plaintiff defendants has prepared false alleged memo of gift dated 10.05.2010 and on the basis of said memo of gift, defendants has got decree in their favour. The plaintiff wants to implead Shamshad and Sabar in the present suit, which will not change the nature or stage of the suit. It is pertinent to mention here that earlier application under Order 1 Rule 10 of CPC for impleading Shamshad and Sabar in the present case has been dismissed by this court. But now circumstances has been*

changed as Shamshad and Sabar has obtained judgment and decree dated 10.01.2019 in their favour on the basis of memo of oral gift dated 10.05.2010 and plaintiff wants to challenge the said memo of oral gift and decree dated 10.01.2019. This court is of the view that the amendments sought by the plaintiff is required to be allowed as both the suit are pertaining to same property. Accordingly, the application stand allowed and disposed off in the above terms. Since the plaintiff has challenged the judgment and decree dated 10.01.2019 in favour of Shamshad and Sabar minors through their mother Rubiya wife of Pale Khan resident of Village Asdullapur (Bhauri Khurd) Tehsil Malerkotla, therefore, they became necessary parties, in whose absence the present suit cannot be decided. Therefore, this court ordered to implead Shamshad and Sabar minors through their mother Rubiya as defendants in the present case. Amended Head Note and Amended Complaint is already on file. Notice to Defendant no.3 and 4 be issued for 04/02/2019.

5. Such order left defendant No.1 Pala Khan @ Pale Khan aggrieved and he has filed the present revision petition praying that the same be accepted, the impugned order be set aside and application under Order 1 Rule 10 CPC filed by the plaintiff be dismissed.

6. Notice of the revision petition was given to respondents and respondent No.1/plaintiff has put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I do not find any fault with the impugned order.

8. The plaintiff had filed a suit for possession by way of specific

performance against Pala Khan @ Pale Khan and his mother Dhanno. That suit was filed on 11.7.2014. According to the plaintiff now he has come to know that a collusive decree has been got passed in favour of Shamshad and Sabar sons of Pala Khan @ Pale Khan on the basis of oral gift deed by instituting Civil Suit No.126 dated 26.10.2016, decreed on 10.1.2019. That suit was filed during the pendency of the suit for specific performance instituted by Avtar Singh against Pala Khan @ Pale Khan etc. The said decree thus appear to be result of collusion between the present defendants and plaintiff in that suit, who are none else but sons of defendant No.1 Pala Khan @ Pale Khan, who had filed the suit through mother Rubiya, who is wife of Pala Khan @ Pale Khan. It appears that the decree has been suffered to defeat the rights of the plaintiff to come up with a plea that when defendants are said to have entered into agreement to sell with the plaintiff at that time they were not owner of the suit property that is way a memo or oral gift deed dated 10.5.2010 seems to have been set up. The trial Court was justified to take into consideration all those facts and then to allow the application. As regards dismissal of the earlier application, it has been clarified that it was for the reason that at that time judgment and decree dated 10.1.2019 in favour of the applicant Shamshad and Sabar was not there, therefore, the presence of Shamshad and Sabar before the Court for proper and complete adjudication of the controversy and consequent amendment in the plaint was required. The trial Court has not done anything wrong in allowing the application.

9. It interesting to note that defendant No.1 Pala Khan @ Pale

Khan is feeling unnecessarily aggrieved by the order when there is no occasion for him to do so and to file the present revision petition.

10. As regards the judgments referred to by learned counsel for the revision petitioner i.e. *Rajkumar Gurawara (Dead) Thr. LRs. Versus M/s S.K. Sarwagi & Co. Pvt. Ltd. and another, 2008(4) RCR(Civil) 824, Ajit Singh Versus Sulakhan Singh, 2003(4) RCR(Civil)427, Mata Narinjan Kaur Versus Bhagwant Bhajan Singh, 1998(4) RCR(Civil) 61, Gurinder Singh Versus Gulzar Singh and another, 2015(5) RCR(Civil)609* and *Bharat Karsondas Thakkar Versus M/s Kiran Construction Co. & Ors., 2008(3) RCR(Civil) 57*, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

11. I do not find any illegality or infirmity in the impugned order, which might have called for interference by this Court while exercising revisional jurisdiction.

12. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 14.2.2019 stands vacated.

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

25.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No