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CR-1648-2020(O&M)
Date of decision: 14.09.2023

..Petitioners

**MADHO KRISHAN @ MADHAV JINDAL
AND OTHERS**

..Respondents

Present: Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein are the defendants in a suit for possession by way of partition filed by the respondents (plaintiffs). The plaintiffs have sought partition of a plot measuring 74 marlas. They claim to be the owner to the extent of 57 marlas. It is also their case that plaintiff No.2 purchased 17 marla plot vide sale deed dated 09.06.2014.
2. When the proceedings were pending for passing preliminary decree, the petitioners (defendants) before the trial Court filed an application for permission to amend the written statement while alleging that the plot measuring 17 marla purchased on 09.06.2014 is the result of fraud as the aforesaid area is part of the street. However, the Court of first instance dismissed the application on the ground that the defendants are indirectly challenging the title of plaintiff No.2 and the application has been filed at a belated stage. The aforesaid order is under challenge before this Court.
3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the petitioner while drawing the attention of the Court to the layout plan (Annexure P-6) and photograph (Annexure P-7), submits that the sale deed of 17 marla land in favour of the plaintiff No.2 is with respect to a street, which was left by the parties in order to have ingress and egress for all the plot holders in the area. He submits that under the garb of decree for partition, the plaintiffs want to occupy the same. He submits that the defendants should have been granted opportunity to prove the aforesaid facts.

5. On the other hand, the learned counsel representing the plaintiffs (respondents herein) supported the order passed by the trial Court while submitting that even in the revenue record there is no passage.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. From perusal of the layout plan, it appears that a larger plot was divided into smaller plots and sold to various persons. Some area has been left as a passage. Such area results in dedication of a property to a public cause, which is the common purpose. The defendants are required to be given an opportunity to prove that case. Merely because there is no entry in the revenue record with respect to the passage itself is not sufficient to discard the plea put forth by the defendants. The existence of the passage can be examined by appointing a local commissioner, who can submit a report of investigating the ground situation.

8. Moreover, in this case, the preliminary decree for partition is yet to be passed.

9. The Supreme Court in a recent judgment in *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2022 SCC Online SC 1128*, has held that formal amendment of pleadings should be liberally allowed by the Court and while allowing such amendments, strict rules of procedure as laid down by Code of Civil Procedure, 1908, are not applicable.

10. In view of the aforesaid facts, the revision petition is allowed. The impugned order passed on 09.01.2020, is set aside. The petitioners are permitted to amend the written statement.

11. With these observations, the present petition is disposed of.

12. All the pending miscellaneous applications, if any, are also disposed of.

September 14th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*