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

CR-3262-2023 (O&M)

Date of Decision: 26.05.2023

Jasbir Singh

....Petitioner

Versus

Mukhtar Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 09.05.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Tarn Taran, whereby application filed by petitioner/defendant under Order 6 Rule 17 CPC for amendment of written statement was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Late Pal Singh was owner of 6 Kanals, land in Village Chohla Sahib and 11 Kanals 16 Marlas land in Village Rattoke. He died unmarried and issue-less in the year 1977-78. Before his death, he executed a Will dated 12.04.1970 in favour of his nephew Sohan Singh son of Lal Singh. Petitioner-defendant is a grandson of said Sohan Singh. On the basis of this Will, mutation no.1951 dated 21.12.2007 *qua* aforesaid land in Chohla Sahib

was sanctioned in favour of Sohan Singh and subsequently in favour of petitioner-defendant. Similarly, mutation no.3498 dated 12.09.2014 regarding land in Village Rattoke was sanctioned in favour of Sohan Singh and thereafter mutation no.3499 dated 12.09.2014 in favour of his son Mewa Singh followed by mutation no.3450 dated 12.09.2014 in favour of petitioner- defendant.

2.2. Respondent-plaintiffs are grandsons of Mohan Singh s/o Lal Singh. They have filed a civil suit dated 17.7.2018 (Annexure P-1) for declaration challenging the above-said Will dated 12.04.1970 and the mutations sanctioned on the basis of the said Will.

2.3. Upon notice, suit is being contested by petitioner-defendant. In his written statement a specific plea has been taken that respondent-plaintiffs and/or their forefathers sold the land beyond their share from time to time and also sold the ancestral house in the year-1986 beyond their share. Later they shifted to Village Verowal and as such, have no concern with the land of Pal Singh.

2.4. On the basis of the pleadings of the parties, the Ld. Trial Court framed various issues and the parties led their respective evidence.

3. Though the sale deeds executed by respondent-plaintiffs and their forefathers were placed on record, but inadvertently detailed recital of those sale deeds were not incorporated in the written statement, is the stand of petitioner herein. Accordingly, application dated 17.4.2023 (Annexure P-3) was filed before Ld. Trial Court under Order 6 Rule 17 CPC for amendment of the written statement. Said application was contested by the

respondents-plaintiffs by filing their reply dated 08.05.2023 (Annexure P-4).

Vide impugned order dated 09.05.2023 (Annexure P-5), the said application was dismissed by Ld. Trial Court.

4. Learned counsel for petitioner would *inter alia* argue that Ld. Trial Court has lost sight of the fact that the proposed amendments will not change the nature of suit and would rather elaborate the stand already taken in the pleadings.

5. Given the nature of order I propose to pass, issuance of notice to respondent/plaintiffs is dispensed with, as no prejudice is likely to be caused to respondent/plaintiffs.

6. Heard learned counsel for petitioner/defendant.

7. My attention has been drawn to para 3 of application (Annexure P-3), wherein it was contended as under:-

“[i] Land measuring 06 Kanals executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Jagir Kaur wife of Harbhajan Singh son of Puran Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 20.01.1987 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[ii] Land measuring 02 Kanals 10 Marias executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Sukhraj Singh son of Hari Singh son of Gurbax Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 23.12.1983 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[iii] Land measuring 06 Kanals executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Cholla Sahib Tehsil & District Tarn Taran in favour of Sukhraj Singh son of Hari Singh son of Gurbax Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated

17.08.1982 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[iv] Land measuring 10 Marlas executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Sukhraj Singh son of Hari Singh son of Gurbax Singh resident of village Chohla Sahib Tehsil & District Tarn Taran, vide sale deed dated 24.05.1984 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[v] Land measuring 03 Kanals executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Sukhraj Singh son of Hari Singh son of Gurbax Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 10.07.1984 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[vi] Land measuring 06 Kanals executed by Jagir Kaur wife of Harbhajan Singh son of Puran Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Jasbir Singh son of Mewa Singh son of Sohan Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 23.12.1997 in respect of land situated at village Rattoke Tehsil & District Tarn Taran.

[vii] Land measuring 06 Kanals 17 Marias executed by Mohan Singh son of Lal Singh son of Ganda Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Gurdwara Bhai Adali Sahib of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 11.01.1980 in respect of land situated at village Chohla Sahib Tehsil & District Tarn Taran.

[viii] Land measuring 08 Kanals executed by Karam Singh son of Mohan Singh son of Lal Singh resident of village Chohla Sahib Tehsil & District Tarn Taran in favour of Harbhajan Singh son of Puran Singh son of Warayam Singh resident of village Chohla Sahib Tehsil & District Tarn Taran vide sale deed dated 20.01.1987 in respect of land situated at Village Chohla Sahib Tehsil & District Tarn Taran. The certified copies of the sale deeds are attached herewith.”

8. In response to the corresponding paragraphs, there has been no denial to the aforesaid averments which amounts to admitting the sale deeds. That apart, having seen para 7 of written statement (Annexure P-2), as it exists, it is borne out that specific plea has already been taken by defendants that plaintiff and/or their forefathers have already sold the land beyond their share from time to time including the ancestral house in the year-1986 and thereafter they shifted to another Village Verowal and currently has no concern with the land and common predecessor-in-interest i.e., Pal Singh. In response to the said specific pleading in the written statement, no replication has been filed by plaintiffs, which again suggests that there is no denial to the said averment. Having seen the contents of the application seeking amendment of the written statement as well as the proposed amendment, particularly as stated in para 3 of the application *ibid*, it is borne out that the sale deeds which are sought to be now placed on record are by way of certified copies of the original and the same were obtained from the office of the Sub-Registrar in support of the already existing averment in para 7 of the existing written statement (Annexure P-2).

9. In the premise, I see no reason as to why the said application cannot be allowed, given that sufficient reasons have been given for non-production of documents sought to be produced at this stage, coupled with the fact that the proposed amendment would not change the defense already taken in the written statement.

10. For delay, the other side can be compensated by costs. Be that as it may, in the totality of circumstances, the revision is allowed. Impugned

order is set aside and the application seeking amendment is allowed subject to payment of costs of Rs.10,000/- payable to respondent/plaintiffs and the petitioner is permitted to place amended written statement on record.

11. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 26, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No