

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
117 CR-3143-2023 (O&M)
Date of decision: 22.05.2023

Shyam Lal

...Petitioner(s)

Vs.

Ankit Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the plaintiff challenging order dated 21.04.2023 (Annexure P5) passed by learned Civil Judge (Junior Division), Kurukshetra, whereby application filed by the petitioner-plaintiff under Order 6 Rule 17 CPC to amend the plaint, has been dismissed.

2. It is submitted by learned counsel for the petitioner that the petitioner became owner in possession of the suit property by way of registered sale deed No.386 dated 12.04.2016 executed in his favour by defendant No.1/respondent No.1 herein. It is submitted that, however, subsequently, said defendant with mal-intention, transferred the suit property to defendant No.2/respondent No.2 herein, vide registered sale deed No.2735 dated 22.06.2016. As the sale deed executed in favour of the petitioner was prior in time, accordingly, petitioner filed the present suit for declaration and permanent injunction on the ground that he is owner in possession of the suit property on the basis of registered sale

deed No.386 dated 12.04.2016, and the sale deed No.2735 dated 22.06.2016 executed by defendant No.1 in favour of defendant No.2 is illegal, null and void.

3. It is submitted that, however, during the pendency of the suit, the defendant No.2 took forcible possession of the suit property from the petitioner in December 2017, and started raising construction over it. It is submitted that as such, the plaint is required to be amended to the effect mentioned in para No.8 (i to iii) of the present application (Annexure P-3). It is submitted that for the proper adjudication of the matter, it is necessary that the present amendment be allowed, and the petitioner be permitted to add relief of mandatory injunction. It is submitted that however, vide the impugned order, the learned trial court has dismissed his application without appreciating that if the proposed amendment is not allowed, the fact of dispossession of the petitioner from the suit property during the pendency of the suit would not form part of the pleadings and the petitioner shall suffer irreparable loss and injury. It is further submitted that in case the application is allowed, the defendants shall suffer no prejudice and shall be granted an opportunity to file amended written statement. In support, learned counsel relies upon judgment of Hon'ble Supreme Court in **Dhanpal Balu Lhawale Vs. Adagouda Nemagouda Patil (Dead) by Prop. LRs. (SC) Law Finder Doc ID # 202574** and of this Court in **Tarlochan Singh Vs. Bhagwant Singh (P&H) Law Finder Doc ID # 20245; Vipin Sethi Vs. Diladar Singh (P&H) Law Finder Doc ID # 253575; Harnek Singh Vs. Pritam Singh (P&H) Law Finder Doc ID #**

18797; Phul Pati Vs. Bhim Singh (P&H) Law Finder Doc ID # 817072; Karnail Singh Vs. Sohan (P&H) Law Finder Doc ID # 18763; Jeet Singh @ Ranjit Singh Vs. Baboo Singh (died) represented through his LRs (P&H) Law Finder Doc ID # 36058 and Sukhwinder Singh Vs. Jasbir Kaur (P&H) Law Finder Doc ID # 522070.

4. No other argument is made on behalf of the petitioner.

5. I have heard the learned counsel, and with his assistance perused the file as also considered the citations relied upon by him.

6. A few dates are important. The present suit was filed on 03.03.2017. It is the petitioner's own case that defendant No.2 took forcible possession of the suit property from him in December, 2017. However, no reasons have been cited by the petitioner as to why the present application has been filed after a delay of five years thereafter, on 30.11.2022.

7. Moreover, a perusal of the record of the case evinces that plaintiff's evidence was closed on 04.07.2019, and matter was fixed for defendants' evidence. At that stage, on 02.11.2021, the petitioner filed the first application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint, which was allowed on 13.12.2021. Thereafter, the case was again fixed for defendants' evidence. On 11.03.2022, petitioner moved the second application, this time for additional evidence, which was partly allowed vide order dated 14.10.2022. Thereafter, the case was yet again fixed for defendants' evidence; when the present (third) application was filed for amendment of the plaint on 30.11.2022. Clearly,

the petitioner has adopted a lackadaisical approach towards the present proceedings.

8. The ostensible reason cited by the petitioner is that the present amendment is necessitated on account of the fact that the respondent/defendant has taken possession of the property during the pendency of the suit. However, a perusal of para No.3(iv) of the written statement filed by defendant No.2 on 07.07.2017 (Annexure P-2), reveals that it has been specifically averred therein that defendant No.2 is owner in possession of the suit property since the date of its purchase by her vide registered sale deed No.2735 dated 22.06.2016. Defendant No.2 has also filed a counter claim wherein, in para No.2 thereof she has categorically averred that the petitioner, in collusion with defendant No.1, is interfering in her peaceful and lawful possession over the suit property. It is not the case of the petitioner that he has filed a replication controverting the above said averments on part of the defendant No.2. At least nothing to this effect has been brought to the notice of this Court. A perusal of the pleadings therefore reveals that it is the case of defendant No.2 that she is in possession of the suit property since the very beginning.

9. Furthermore, even during his cross-examination on 26.04.2018, the petitioner has admitted that when defendant No.2 was laying DPC, he was present on the spot and he submitted an application in this regard. It is therefore clear, that the factum of possession of defendant No.2 over the suit property is not a new fact which has just come in the knowledge of the petitioner. From the above facts, it is crystal clear that

despite having foreknowledge of the factum of possession of the defendant No.2 over the suit property, petitioner has filed the present application for amendment of the plaint at a highly belated stage only on 30.11.2022. The story put forth by the petitioner for seeking present amendment is therefore, belied by the facts on record.

10. Without adverting to the merits of the amendment sought by the petitioner, it is yet necessary to consider a few facts. By way of the present amendment, the petitioner has sought to add the relief of mandatory injunction. In my very clear opinion, the same cannot be permitted as that would alter the nature of the suit and would therefore, be prejudicial to the rights of the defendants. The case file reveals that it has been the case of defendant No.2 from the very beginning that she is owner in possession of the suit property. However, it is only now, after about five years of filing the suit, that the petitioner wants to amend the nature of the suit by seeking addition of relief of mandatory injunction. Clearly, the petitioner wants to correct/fill the lacuna in his case. As per law, the same cannot be permitted. It has been very vehemently submitted by learned counsel for the petitioner that in case the present amendment is not allowed, the same would necessitate the filing of another suit and would lead to multiplicity of litigation. Be that as it may, it was incumbent upon the petitioner to have been alive to his rights, if any, and in the present proceeding the petitioner cannot be allowed to take the benefits of his own wrong, especially at this belated stage.

11. As regards the voluminous case law cited on behalf of the petitioner, the same can be of no help to the petitioner being distinguishable in the facts and circumstances of the case.

12. Hence, keeping in view the discussion here in above, I find no ground is made out to exercise the revisional jurisdiction of this Court. Present revision petition accordingly stands, **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

22.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No