

117 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCivil Revision No. 3572 of 2023(O&M)
Date of Decision: 03.07.2023

The Hoshiarpur Express Transport Co.(P) Ltd.

...Petitioner

Versus

Hoshiarpur Azad Transport Co. (P) Ltd.)

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. G.S. Punia, Sr. Advocate with
Mr. Amitoj Singh, Advocate
For the petitioner.

KARAMJIT SINGH, J.

The present revision petition has been filed by the petitioner/ plaintiff against the order dated 29.04.2023 (Annexure P-1) passed by the Court of Civil Judge(Sr.Divn.), Hoshiarpur whereby the applications filed under Order 6 Rule 17 CPC seeking amendment of written statement as well as counter claim are allowed in civil suit titled Hoshiarpur Express Transport Company Private Limited Vs. Hoshiarpur Azad Transport Company Private Limited.

The counsel for the petitioner, *inter alia*, contends that respondent/ defendant has taken contradictory plea while seeking the amendment of the written statement and counter claim. It is further submitted that after framing of issues, the suit is fixed for recoding evidence

of plaintiff and some of the evidence on behalf of the plaintiff is already recorded at which stage the respondent filed applications for amendment of written statement and counter claim by taking plea that recently respondent has found a photo copy of registered sale deed dated 07.09.1964 executed by one Kundan Singh in favour of Azad Transport Private Limited, Hoshiarpur with regard to property in question and that on the basis of alleged sale deed respondent is claiming his ownership over the suit property. The counsel for the petitioner further submits that in its written statement the respondent has nowhere claimed his ownership over the suit property. The counsel for the petitioner further submits that now through the proposed amendment the respondent has claimed his ownership with regard to suit property and the said plea is totally contradictory to what the respondent has pleaded in its written statement. It is further contended that the proposed amendment is not permissible under law. So, prayer is made that the present petition be allowed and the impugned order be set aside.

I have considered the submissions made by counsel for the petitioner.

Petitioner/ plaintiff has filed suit for possession by partition of suit property which is a double storey building bearing No. 217-L situated near Bus Stand, Hoshiarpur. Respondent/ defendant put in his appearance and filed written statement wherein it was pleaded that the petitioner/ plaintiff is occupying first floor of the suit property as a licensee and otherwise petitioner/ plaintiff is having no concern with the suit property and as such he has got no right to seek partition of the same. Along with the written statement the respondent/ defendant also filed counter claim wherein he specifically claimed itself to be the exclusive owner of the suit property

and further pleaded that as the petitioner has denied the ownership of the respondent, it has got no right to occupy any part of the suit property as a licensee and the said license stands revoked. So, the respondent claimed vacant possession of first floor of the suit property by way of counter claim.

Through the proposed amendment the respondent has sought permission to plead the following facts:-

“That recently in the old record of counter claimant/ company, the company has found a photocopy of a registered sale deed dated 07.09.1964 executed by Kundan Singh s/o Dr. Surat Singh in favour of the Azad Transport Private Limited Hoshiarpur through Bhagat Singh son of Basant Singh. Infact, so many managements of Hoshiarpur Azad Transport Private Limited company changed from time to time and Tarlochan Singh became the director at very later stage and he was not in the knowledge of any sale deed dated 07.09.1964 in favour of the Azad Transport Private Limited/ counter claimant. Earlier Kundan Singh in the capacity of owner has executed agreement to sell dated 17.08.1964 in favour of the counter claimant. Kundan Singh was absolute owner in possession of the suit property and Kundan Singh in the capacity of owner transferred property no. 217-L, in the name of Hoshiarpur Azad Transport Private Limited Company through registered sale deed dated 07.09.1964 in favour of the Azad Transport Private Limited Hoshiarpur through Bhagat Singh and the said sale deed was duly registered as document number 634 in the office of Sub-registrar Hoshiarpur on 07.09.1964. The said sale deed was never challenged by any office bearers of Hoshiapur Express Transport Cooperative Limited and the sale deed dated 07.09.1964 duly confers title upon the counter claimant. Even the tenant of disputed property namely subhadra acknowledge the Hoshiarpur Azad Transport Private Limited/ counter

claimant as owner of the disputed property in Civil Suit No. 578 of 14.02.2008.”

In both the applications, the respondent has clarified that he recently came across photocopy of registered sale deed dated 07.09.1964 and accordingly he intends to amend the pleadings in written statement as well as counter claim. There is no doubt that in the earlier counter claim the respondent claimed himself to be the exclusive owner of the suit property and even now by way of amendment the respondent intends to substantiate/clarify his claim by placing reliance on copy of sale deed dated 07.09.1964.

So, it cannot be said that the respondent intends to take contradictory pleas by way of amendment of the pleadings. The petitioner has also failed to show that the proposed amendment is going to change the nature of the suit/ counter claim or is going to prejudice the petitioner in any manner. This Court is also of the view that the proposed amendment is necessary to avoid the multiplicity of litigation between the parties. It also appears that at the time of filing of written statement/ counter claim, the petitioner was not aware of any such sale deed dated 07.09.1964, which he came across lateron. In the given circumstances, it cannot be said that the facts sought to be incorporated in the written statement as well as counter claim were within the knowledge of the respondent at the time of filing of earlier written statement/ counter claim. The sum and substance of the amendment sought by the respondent is similar to that of the stand taken by it in the written statement/ counter claim earlier. This Court is of the view that the learned trial Court rightly allowed the applications filed by the respondent under Order 6 Rule 17 CPC.

In view of the above, the present petition is hereby dismissed without commenting on the merits of the case.

03.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No