

CR-5248-2019 (O&M)

223 (4th case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5248-2019 (O&M)

Date of decision: May 31, 2023

Yusaf

....Petitioner

versus

Rukamdin and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Abdul Shehbaz Thind, Advocate for petitioner.

Mr. Aayush Gupta, Advocate for respondents No.2 to 4.

ARUN MONGA, J. (ORAL)**CM-17548-CII-2019**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 18.07.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Ludhiana whereby application filed by respondent-defendants for rejecting the affidavit of Shekawat Ali tendered as Ex-PA, was allowed.

2. Averments are that petitioner-plaintiff filed suit for permanent injunction restraining defendant/respondents, their employees, agents, servants, associates etc. from interfering or causing to interfere in the peaceful possession of plaintiff and from dispossessing or causing to dispossess the plaintiff from the property known as “*Gujjaran da dera*” in village Poheer, Tehsil and District Ludhiana and from causing any interference in the use of property by the plaintiff and from doing any act detrimental to interest of plaintiff and from demolishing or

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causing any damage to the existing position and construction in existence in the above said property in any manner whatsoever.

2.1. During pendency of said suit, defendant-Bittu Ram in connivance with his brother Varinder Kumar and close friend Manmohan Singh got registered a false criminal case under Sections 323, 341, 506, 148 read with Section 149 of Indian Penal Code, 1860 (for short 'IPC') against plaintiff and his wife Roshan Bibi, sons Bashir Ahmed, Shekhawat Ali and Shabir only to dispossess plaintiff from suit property.

2.2. Vide judgment dated 13.08.2018 (Annexure P-3), learned Judicial Magistrate First Class, Ludhiana acquitted plaintiff and others from the said criminal case. A criminal case under Sections 452, 323, 316, 506 read with Section 34 IPC was registered against Bittu Ram and Varinder Singla, but the said criminal case was wrongly cancelled and daughter-in-law of plaintiff, namely, Shailo Bibi being complainant was summoned by learned *Illaqa* Judicial Magistrate First Class, Ludhiana. She got recorded her statement that she was not in favour of said cancellation report and filed protest petition. Learned Judicial Magistrate Ist Class, Ludhiana vide order dated 11.05.2017 (Annexure P-4) summoned aforesaid Bittu Ram and Varinder Singla. Petitioner/plaintiff sought to bring these facts on record by way of proposed amendment in the plaint. Petitioner filed an application for amendment of plaint, in this regard. Said application was rejected by learned trial Court. Further, the same was challenged in CR-2531-2019 before this Court.

2.3. Petitioner stepped into witness-box and had given his evidence by way of affidavit (Annexure P-5) on 14.05.2019 narrating relevant facts which were in his knowledge and were necessary for proper and effective adjudication of matter in dispute.

2.4. Respondent moved application (Annexure P-6) for rejecting the aforesaid affidavit by way of evidence of Shekawat Ali.

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2.5. Vide impugned order dated 18.07.2019 (Annexure P-1), learned trial Court allowed the application filed by respondents for rejecting the affidavit of plaintiff.

3. Learned counsel for petitioner/plaintiff submits that learned trial Court failed to appreciate that once an affidavit in lieu of examination-in-chief is filed, it partakes the character of examination-in-chief of the concerned witness which cannot be altered later on.

4. As per office report, notice could not be issued to respondent for want of process fee. However, at this stage, learned counsel for respondents No.2 to 4, who is appearing in connected revision, accepts notice and submits that impugned order has been passed by giving cogent and convincing reasons and calls for no interference by this Court.

5. I have heard learned counsel for parties and perused the record.

6. Order XVIII Rule 4 (1) of CPC provides that the examination-in-chief of a witness shall be on affidavit provided that where documents are filed and parties rely on them, the admissibility of such documents filed with the affidavit shall be subject to the orders of the Court. In other words, the affidavit is the examination-in-chief of a witness. It is no body's case that contents of the affidavit of examination-in-chief are scandalous, frivolous or vexatious; or tend to embarrass or delay the fair trial of the suit; or otherwise amount to abuse of the process of the Court. No statutory provision or case law has been brought to my notice for total or even partial rejection of the affidavit forming the examination-in-chief of a witness and/or its exclusion from the record on the ground that it contains facts, of which insertion in the plaint by its amendment had been refused.

6.1. In connected revision bearing No.CR-2531-2019, in my order of even date, it has been observed/opined that the facts relating to the registration of FIR

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and subsequent acquittal of the plaintiff in criminal case are more of an elaboration of the narrative already contained in the plaint and there is no ground as to why the same cannot be stated in the examination-in-chief of the plaintiff/his witnesses. Same is the position in present case. Further, the events happening after the filing of the suit can and ought to be taken into consideration if they are relevant to the adjudication of controversy. In my opinion, the learned trial Court erred in rejecting the petitioner’s affidavit on the ground that the affidavit is beyond pleadings or a misuse of the process of law and would frustrate the order dismissing the petitioner’s application to amend the plaint.

6.2. In view of the above discussion, the impugned order is set aside. The learned trial Court will proceed further with the trial of the suit in accordance with law.

7. Revision petition is disposed of, accordingly.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 31, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No