

2023:PHHC:122356

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

Sr.No.131

CR No.4905 of 2023

Date of Decision:-12.09.2023

Sumitra and another

...Petitioners

Versus

Ranjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr.P.K.Ganga, Advocate for the petitioners.

Gurbir Singh, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 08.08.2023 (Annexure P-10) passed by Additional Civil Judge (Sr. Divn.), Ellenabad, Sirsa whereby the application under Order 6 Rule 17 CPC for amendment of plaint filed by the petitioners-plaintiffs has been dismissed.

2. Brief facts as culled out from the papers book are that petitioners/plaintiffs (hereinafter referred to as 'the plaintiffs') filed a suit for declaration to the effect that the plaintiffs are owners in possession of the plot measuring 9 marlas as detailed in the head-note of the plaint and entries in the revenue record showing the defendants are owners in possession of the plot in question are wrong, illegal against law and the facts, which are liable to be corrected in favour of the plaintiffs. Plaintiffs have also sought relief of permanent injunction restraining respondents/defendants (hereinafter referred to as 'the defendants') from transferring/alienating the plot in question on the basis of above said

wrong entries. Plaintiffs have further sought for a relief of mandatory injunction directing the defendants to get the sale deed of the suit property executed/registered in favour of the plaintiffs as the sale consideration of which has already been paid by the plaintiffs to the defendants.

3. Brief facts mentioned in the plaint are that the defendants had met the plaintiffs in the year 2011 and told them that they were in need of money for the purpose of installing tube-well and pipe-line in their agricultural land. The amount of Rs.9,00,000/- was given to the defendants by the plaintiffs. The defendants failed to return the said amount despite repeated demands made by the plaintiffs. After some time, the defendants agreed to sell the plot in question to the plaintiffs and further agreed to get the suit property executed and registered in favour of the plaintiffs for the sale consideration already received by them from the plaintiffs as they were not in a position to return the borrowed amount and possession of the said plot was given to the plaintiffs. Since then the plaintiffs are in possession of the plot measuring 9 malras detailed in the head note of the plaint. Plaintiffs has installed one Atta Chakki, Oil Speller, small rice sheller one Japani Press and One Painja Machine on the plot and Plaintiff No.1 took water and electricity connection on the said plot in the year 2014. The defendants did not execute the sale deed in favour of the plaintiffs and put off the matter on one pretext or the other. Panchayat was also convened and two Salasnamas dated 19.06.2015 were got executed to solve the dispute between the parties but the defendants thereafter did not abide by the terms and conditions of the said Salasnamas. The defendants filed a written statement and specifically

denied the fact of borrowing a sum of Rs.9 lacs which was paid by the plaintiffs. They further stated that plaintiff no.2 had taken away the possession of said plot forcibly in the year 2015. Father of defendants No.1 and 2 moved many applications before the public authorities including application against the employees of the DHBVNL who installed the electricity connection in the name of plaintiff No.1 on the suit land. It has been found that plaintiff No.1 had applied electricity connection for installation of chakki etc. in khasra No.617/2/1 but connection has been installed in the suit land i.e. Khasra No.617/3 in which plaintiffs has no concern and plaintiffs are not owner of Khasra No.617/2/1. The defendants also filed counter-claim for possession of the suit land and occupation charges till removal of unauthorized possession. Plaintiffs moved the application (Annexure P-6) for amendment of the plaint.

4. Learned counsel for the plaintiffs has argued that the defendants had agreed to sell the suit property for a total sale consideration of Rs.9 lacs which has already been paid to the defendants by the plaintiffs and defendants further agreed to get the sale deed executed and registered in favour of the plaintiffs but the defendants did not execute the same. So the plaintiffs are entitled to a decree of execution and registration of sale deed by specific performance on the basis of oral agreement. Previous counsel of the plaintiffs did not frame the suit properly. The said facts and ground of reliefs are the same in substance and no new relief is being added and nature of the relief and grounds remains the same. Plaintiffs have also sought amendment in para No.9 of

the plaint by substituting the same with a new para. Plaintiffs are ready to bear the expenses of registration fee, stamp duty etc. in order to avoid future objection. The suit for specific performance was to be filed so amendment of plaint is necessary. The merits of the case cannot be seen at this stage. Learned trial Court has wrongly dismissed the application *inter alia* on the ground that amendment is sought after four years whereas limitation for filing such suit is 03 years. The proposed amendment deserved to be allowed in view of the law laid down in case 2002(2) RCR (Civil) 201 titled as “**Ram Kumar** Vs. **Smt. Shanti**” and the case CR No.441 of 2021 decided on 1.3.2021, titled as “**Kanwalpreet Singh** Vs. **Gurpreet Kaur**” and another. No new cause of action has arisen so amendment sought is within limitation.

5. I have heard the submissions of learned counsel for the petitioners and perused the record.

6. The plaintiffs have filed the suit for declaration to the effect that they are in possession of the plot measuring 9 marlas as shown in the head-note of the plaint and entries in the revenue record showing the defendants as owner of the suit land are liable to be corrected. Plaintiffs also sought relief of mandatory injunction to get the sale deed of the suit property executed and registered. Plaintiffs now want to amend the plaint by substituting in the head note as well as relief clause of the plaint. The proposed amendment is as under:-

a. Suit for possession through specific performance or oral contract by the defendants with regard to plot measuring 09 marlas, which is ½ share of total plot measuring 18 marlas, comprised in Khasra No.617/3(0-18), G.M. Plot, as entered in

Khewat No.928 Khatuni No.1087 as per the jamabandi for the year 2011-2012, situated in village Kuttawadh, Tehsil Ellenabad, District Sirsa along with construction/ installation thereon consisting of one oil speller, small rice shellr, Masala Chakki, flour Mill, room, shed Japani Press, Painja Machine etc. bounded as on East-Road, West-house of Shri Veer Singh son of Shri Kishan Singh, North-street and South-House of Satnam Singh son of Mehtab Singh, shown as A.B.C.D. in the sit plan attached herewith along with all rights appurtenant thereto and the defendants have nothing to do with the above said plot measuring 09 marlas and construction/installation made by the plaintiffs thereon and the entries in the revenue records showing the defendants to the owners in possession of this plot measuring 09 marlas, are wrong, illegal, against law and facts and are liable to be corrected and changed in favour of the plaintiffs, as the plaintiffs have already paid the total sale consideration of this plot to the tune of Rs.9,00,000/- to the defendants and as a consequential relief of permanent injunction restraining the defendants from selling or alienating the above said plot/factory on the basis of wrong entries in the revenue records and from causing interference, forcibly and illegally, into the lawful and peaceful possession of the plaintiffs on the above said property, in any manner, till the final decision of this suit and also for the execution and registration of the sale deed in respect of the above said plot measuring 09 marlas through specific performance, in favour of the plaintiffs, on the basis of evidence of every description-oral as well as documentary.”

7. Neither any date of oral agreement is disclosed nor stipulated date of the execution of the sale deed is mentioned in the proposed amendment. It is not even disclosed in the original plaint when or on which date plaintiffs came into possession of the suit property. In the

original plaint, (Annexure P-1), the valuation of the suit for the purpose of court fee and jurisdiction is mentioned in para No.12 which reads as under:-

“That value of the suit for court fee and jurisdiction is rupees 200/- and as such, the court fee stamp of rupees 25 is paid on the plaint.”

8. The plaintiffs have not sought any amendment in the valuation of the suit for the purpose of court fee and jurisdiction. With the proposed amendment, valuation of suit would definitely change. In the case of Kanwalpreet Singh (supra), there was only correction of factual mistake with regard to date of marriage and also place of marriage which does not in a way seemed to change the nature of suit. The suit was at the initial stage and issues were yet to be framed. In the case of Ram Kumar (supra), the parties have been litigating the matter over a number of years and description of one case was missed. It has been held that negligence of the party should not be allowed to come in way of fair play and justice. However, the said amendment was prior to the amendment in the CPC in the year 2002. In para 10 of the plaint, it is mentioned that cause of action arose in the year 2014 when possession of the plot in question was given to the plaintiffs by the defendants with the promise to get the sale deed executed and registered in favour of the plaintiffs and in 2015, two Salasnamas were got executed in the Panchayat to solve the dispute between the parties but the defendants did not abide by the terms and conditions of the said Salasnamas. Since date of oral agreement is not disclosed when plaintiff came in possession of suit property, no

amendment is sought regarding valuation of suit for the purpose of court fee and jurisdiction so proposed amendment is rightly declined by learned trial court.

In view of the reasons discussed above, I do not find any ground to interfere with the impugned order passed by Additional Civil Judge (Sr. Divn.), Ellenabad, Sirsa (Annexure P-10) and the present revision petition is dismissed.

12.09.2023
sd

[GURBIR SINGH)
JUDGE

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No.