

CR-4687-2022 (O&M)

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. 2023:PHHC:067835

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-15926-CII-2022 and
CM-14245-CII-2022 in/&
CR-4687-2022 (O&M)
Date of Decision :10.05.2023

Prem Parkash Gupta

....Petitioner

Versus

Vikas Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ankur Dua, Advocate for the petitioner.

Mr. Abhilaksh Grover, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

Present civil revision petition has been filed challenging order dated 01.08.2022 passed by the Civil Judge, (Junior Division), Rohtak by which, an application filed by the respondent-plaintiff seeking amendment of the plaint was allowed.

In the unamended suit filed by the respondent-plaintiff, an injunction was claimed against the petitioner-defendant that respondent-plaintiff is owner in possession of the suit property i.e. Plot No.130 measuring 242 Sq. yards situated in Palika Colony, Bhiwani Road, Rohtak as well as shop/showroom No.4 and 4-A situated at Palika Bazar, Civil Road Rohtak on the basis of Will dated 07.06.2011 and the alleged amended Will

dated 15.01.2012 be declared as illegal and is based upon fraud.

In para-4 of the suit, respondent-plaintiff mentioned a fact with regard to the forged GPA alleged to have been executed by the plaintiff in favour of his father so as to give him right to transfer the tenancy rights. Even despite mentioning of said fact qua the alleged forged GPA, there was no challenge to the said GPA, which was allegedly executed by the respondent-plaintiff on 15.01.1991.

After filing the suit, an application was moved for amendment of the suit so as to challenge the GPA alleged to have been executed by respondent-plaintiff in favour of his father on 15.01.1991.

The said application has been allowed by the trial Court vide order dated 01.08.2022, which order is under challenge in the present revision petition.

Learned counsel for the petitioner argues that without deciding as to whether a challenge can be raised qua the GPA, keeping in view the pleadings in the suit read with the pleadings in the application seeking amendment of plaint keeping in view the fact that the GPA sought to be allegedly executed on 15.01.1991. Learned counsel for the petitioner argues that in the absence of any averment in the application or in the suit qua the date of knowledge of the said document, without recording finding whether the challenge to the said GPA will be admissible by way of amendment sought to be done in the year 2021 was permissible or not, amendment of the plaint qua challenge to the GPA executed in the year 1991 could not have been allowed hence, the impugned order is liable to be set aside on this ground.

Learned counsel for the petitioner further argues that by allowing the amendment, the nature of suit has been changed as challenge to the GPA is also included in the plaint, which changes nature of the suit itself, hence the amendment sought was not permissible.

Learned counsel for the respondent-plaintiff submits that once the factum of forged GPA was mentioned in the suit but inadvertently was not challenged, the Court below was perfectly within its jurisdiction to allow the amendment so as to decide the lis between the parties on merits.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

While allowing the amendment wherein, challenge to a particular document i.e. GPA executed in the year 1991 was being raised, hence the Court has to ensure that challenge is within limitation keeping in view the pleadings of the parties. A party seeking amendment has to prove before the Court that the amendment with regard to a challenge to a document is within limitation keeping in view the facts/averments already on record. Trial Court has not at all considered the amendment from the said aspect while passing the impugned order. Hence, impugned order dated 01.08.2022 is set aside. The case is remanded back to the trial Court for fresh adjudication of the application seeking amendment of suit so as to record a clear finding as to whether, keeping in view the averments already on record at the time of filing of the application, the amendment sought was within limitation provided or not as well as whether the same will change the nature of the suit or not.

Present revision petition stands disposed of in above terms.

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CM-14245-CII-2022 and CM-15926-CII-2022

Applications are also disposed of.

May 10, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No