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

CR-6393-2019 (O&M)

Date of Decision: 24.02.2023

Dalip Singh

....Petitioner

Versus

Chajju Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rishav Jain, Advocate &
Mr. Kanish Jindal, Advocate
for the petitioner.

Ms. Manveer Kaur, Advocate
for Mr. J.S. Bhandohel, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 15.02.2019 (Annexure P-5) passed by learned Additional Civil Judge (Sr. Division), Moonak whereby application of petitioner under Order 6 Rule 17 CPC for amendment of written statement, was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Plaintiff/respondent filed a suit for possession of suit land as well as for permanent injunction against petitioner/defendant. Petitioner/defendant filed a detailed written statement thereto. However, during pendency of the suit petitioner/defendant filed an application under Order 6 Rule 17 CPC for amendment of the written statement.

2.2. As per the contents of the application, petitioner/defendant contended that his father Chota Singh @ Udey Singh had purchased the suit property from the predecessors of respondent/plaintiff and also from the predecessor of Sohan Singh son of Siam Kaur vide *Bahi* writing which was entered about 62-year ago and as per the said entries, possession of suit property was delivered to father of petitioner. After the death of father of petitioner, the petitioner came into possession of the suit property. He had constructed a house on the said property and electricity meter was installed and since then he is residing in the said property along with family. But as the entry was not made on the basis of *Bahi* writings in the revenue record, Sohan Singh son of Siam Kaur executed an agreement to sell dated 12.04.2018 in favour of defendant wherein he admitted the *Bahi* entry/ownership and possession of petitioner/defendant on the suit property and moreover the said agreement was duly executed vide registered sale deed dated 25.05.2018 vide which defendant was admitted to be in possession of the suit property. Respondent/plaintiff filed reply to the said application. However, vide impugned order the application for amendment of written statement was dismissed.

3. Learned counsel for petitioner contends that the application has been dismissed with the presumption that petitioner wants to change his pleadings. Ld. counsel contends that petitioner does not want to change the pleadings that he purchased the property 62-year ago, rather he wants to add additional information of the subsequent agreement to sell and sale deed, as

mentioned in order dated 14.10.2019 passed by this Court, while issuing notice of motion to respondent.

4. Perusal of impugned order reflects that on one hand Ld. Court below was conscious that liberal approach has to be adopted while allowing the parties to seek amendment in their pleadings, at the same time, it seems to have lost sight of the fact that the application seeking amendment of written statement filed by petitioner was filed immediately on coming to know of execution of agreement to sell dated 12.04.2018 and there was no delay as pointed out by plaintiff or even otherwise made out. Furthermore, the amendment sought would not have in any manner delayed the Court proceedings as the trial is at the very nascent stage since the issues are also yet to be framed.

5. As regards the circumstances leading to execution of agreement to sell, learned counsel for petitioner has drawn my attention to the written statement (Annexure P-2), wherein the factum of predecessor-in-interest of petitioner having purchased the suit property vide *Bahi* writing which entries were made 62-year ago and on the basis thereof, the possession of suit property was delivered to father of petitioner. He points out that after death of father of petitioner, the petitioner continued to be in possession and thereafter petitioner inherited the possession of the suit property. He constructed a house on the same and ever since has been residing there along with the family and an electricity meter has also been installed in his name. However, the said *Bahi Khata* entry was not reflected into the revenue record and in order to avoid any ambiguity on title of the suit property, subsequently the agreement to sell dated

12.04.2018 was executed in favour of petitioner/defendant on the basis of same very *Bahi* entry which has been recited in the agreement and therefore it is not the case of petitioner that he is changing the nature of defence originally taken in the unamended written statement.

6. *Prima facie*, in the peculiar circumstances, I am also of the view that since the agreement to sell has also been executed on the basis of same very *Bahi Khata* entry, which has been pleaded in the unamended written statement, no prejudice would be caused to plaintiff/respondent if the amendment of the written statement is allowed, subject of course to the plaintiff's right to object admissibility of the said agreement to sell, the onus of which is on petitioner to prove in accordance with law.

7. As an upshot of above discussion, the revision is allowed. Impugned order is set aside and the application under Order 6 Rule 17 CPC filed by petitioner/defendant is allowed.

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

(ARUN MONGA)
JUDGE

February 24, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No