

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CR-5326-2022

Date of Decision :05.01.2023

Sarabjit Singh and others

...Petitioners

Versus

Jaswinder Kaur Grewal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mayank Mathur, Advocate for the petitioners.

Mr. Animesh Sharma, Advocate for the respondent No.1.

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Harsimran Singh Sethi, J. (Oral)

In the present revision petition, the challenge is to order dated 07.10.2022 (Annexure P-1) by which, the trial Court has dismissed the application filed by the petitioners for making amendment in the written statement to the counterclaim.

As per the facts pleaded in the present revision petition, one Bhupinder Singh filed a civil suit for permanent injunction against the petitioners as well as the respondents claiming to be the owner in possession of the property on the basis of a sale deed dated 09.03.2012 mentioned in the said civil suit. The petitioners were perma respondents as they were also beneficiary of the same sale deed, which was being contested by respondent No.1. As per the plaint filed by Bhupinder Singh, the property was sold by the brother of respondent No.1 to the petitioners as well as

Bhupinder Singh vide sale deed dated 09.03.2012, hence they are entitled

for use of the same without any interference.

Respondent No.1 appeared in the said suit filed by Bhupinder Singh and raised counterclaim for permanent injunction restraining the plaintiff Bhupinder Singh as well as petitioners herein from interfering in the peaceful possession of the property. While filing reply to the civil suit, respondent No.1 had taken plea that sale deed dated 09.03.2023 is a fictitious document and cannot be made basis for allowing the claim of Bhupinder Singh. In respect of the counterclaim dated 29.05.2012 filed by respondent No.1, the petitioners filed a written statement controverting the said claim.

In the meantime, civil suit filed by Bhupinder Singh, the petitioners who were earlier performa respondents in the said suit were transposed as plaintiffs in the year 2016 but the said suit was withdrawn and only the counterclaim is pending before the competent Court of law for consideration.

After the respondent No.1 led evidence in support of the counterclaim, the petitioners herein realized that though, the factum of the sale deed dated 09.03.2012 has come on record but the same was not part of their written statement to the counterclaim and an application was moved for making amendment in the said written statement. The said application has been dismissed by the trial Court on the ground that the same has been filed after long delay and in case the application for amendment of the written statement is allowed, the same is likely to delay the proceedings in the counterclaim further hence, the said amendment cannot be made and the same was dismissed by the impugned order dated 07.10.2022 (Annexure P-

Learned counsel for the petitioners argues that in the present case, the factum that there was a sale deed had already come on record in the suit filed by Bhupinder Singh where the petitioners were transposed as plaintiffs and even the respondent No.1 was in the knowledge of the said sale deed and had objected to the said sale deed being fictitious, which fact is clear from the pleadings which had come on record in the said civil suit.

Learned counsel for the petitioners submits that keeping in view the said fact, amendment in the written statement, which is only to plead factum of the sale deed dated 09.03.2012 should have been allowed in the interest of justice as the same will not cause prejudice to respondent No.1 except delay for which, the petitioners are ready to compensate the respondent No.1.

Learned counsel for respondent No.1 submits that application filed by the petitioners for making amendment in the written statement is only to delay the proceedings, which are already pending since long and the hindrances are being created intentionally for exclusive enjoyment of the property being owned by respondent No.1. Learned counsel for respondent No.1. submits that issues in the counterclaim have already been framed on 31.01.2014 and it was only after a period of approximately 08 years, the present application was filed by the petitioners especially, when the trial has already commenced hence, there was no ground to allow the application seeking amendment of the written statement especially, when the said fact was already in the knowledge of the petitioners and the impugned order passed by the Court below is perfectly correct and legal.

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

In the present petition, prayer of the petitioners is for making amendment in written statement qua the counterclaim raised by respondent No.1 keeping in view the initial suit filed by one Bhupinder Singh qua the same property, the factum of sale deed dated 09.03.2012 was the basis which was being relied by the petitioners but was being contested by respondent No.1 wherein, respondent No.1 raised claim that said sale deed is fictitious. Once the factum of the sale deed was already on record in the civil suit and the prayer of the petitioners is only to add the said factum in their written statement to the counterclaim filed by respondent No.1, no prejudice is going to be caused to the respondent No.1 except delay. The said delay can be compensated by way of monetary compensation especially, when the evidence is yet to be led by the petitioners in support of their claim raised in the written statement. In case after the amendment of the written statement, respondent No.1 intends to rebut the same, the same can be taken care of in the rebuttal evidence.

The Hon'ble Supreme Court of India in **Civil Appeal No.3362-2006** titled as **Baldev Singh and others vs. Manohar Singh and another** decided on 03.08.2006 has held that amendment in the written statement can be allowed even if, inconsistent pleas are to be taken and in case the said amendment in the written statement will involve further delay, a direction can be given by the Court to dispose of the suit as expeditiously as possible.

Keeping in view the settled principle of law, prayer of the petitioner for allowing amendment in the written statement is allowed. In case the amended written statement is filed by the petitioners by the next date of hearing before the trial Court i.e. 10.01.2023, the same be allowed to

be taken on record.

For the delay, which will be caused due to the said amendment, the petitioners are liable to compensate the respondent No.1 as undertaken by the learned counsel for the petitioners and the same is assessed as Rs.25000/- to be paid by the petitioners while filing amended written statement before the trial Court on 10.01.2023.

Keeping in view the fact that counter claim filed by respondent No.1 is pending consideration for the last 10 years and the respondent No.1 has already led her evidence in support of the said claim and only the petitioners are to produce their evidence, trial Court is directed that the said claim raised by respondent No.1 as her counterclaim be taken to final conclusion within a period of 05 months from the next date of hearing even if, opportunities for leading evidence to the petitioners are to be restricted and short adjournments are to be given in their favour.

Learned counsel for the petitioners has undertaken before this Court that not more than 03 opportunities will be availed by the petitioners to complete their evidence after 10.01.2023.

The present petition stands allowed in above terms.

January 05, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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