

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

129

2023:PHHC:158717

CR-7020-2019

Date of decision: 12.12.2023

KULBHUSHAN JINDAL

..Petitioner

Versus

SUKHWINDER SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. Arun Jindal, Advocate
for respondent No.2 and 3.

ANIL KSHETARPAL, J(Oral)

1. Through this revision petition, the plaintiff assails the correctness of the interlocutory order passed by the trial Court on 09.10.2019 while refusing him the permission to amend the plaint.

2. The petitioner herein claims to be a tenant, who was inducted by Smt. Maya Kaur. He filed a suit for the grant of decree of declaration with consequential relief of permanent injunction. Thereafter, he filed the first application for permission to amend the plaint, which was allowed on 22.08.2014. In the amended plaint, the plaintiff prays for the following relief:-

“It is therefore, prayed that suit of the plaintiff may please be decreed with costs and a decree for declaration to the effect that judgment and decree dated 5.8.2011 passed by Sh. Sham Lal, PCS, Civil Judge Senior Division, Patiala, titled as Maya Kaur Vs. Parkash Chand in the Civil Suit No.11 instituted on 12.1.2004 is a null and void decree as the same has been obtained by Maya Kaur by playing fraud with the court and Parkash Chand. The plaintiff is not bound by the same and cannot be dispossessed from premises under his tenancy and a decree for permanent injunction may please be passed against the defendants restraining the defendants, their servants, agents, employees or anybody else acting on

their behalf or representing them in any manner or any other Legal representatives/heir of Late Maya Kaur Wd/o Gianai Kartar Singh, from dispossessing the plaintiff or interfering with his peaceful possession over shop namely Jain Cycle Store, Patiala, Bhadson Road, Patiala, fully described in the heading of the plaint.

Any other alternative relief which this Hon'ble Court may deem fit in favour of the plaintiff and against the defendant may also be awarded in the interest of justice."

3. In para 13A of the first amended plaint, the plaintiff claims that the judgment and decree passed on 05.08.2011, in the suit titled as "Maya Kaur Vs. Parkash Chand" is null, void and illegal and Smt. Maya Kaur by playing fraud with the Court has obtained possession of the property, which was earlier in the possession of the plaintiff.

4. Thereafter, the parties led their evidence. When the case was at the stage of final disposal, the plaintiff filed yet another application for permission to amend the plaint in order to assert as under: _

"13B. That during the pendency of the present suit, the heirs of Maya Devi got possession of the property in dispute under the garb of judgment and decree passed by Shri Sham Lal, PCS, Civil Judge, Senior Division, Patiala, whereas, the said judgment and decree are of different property. All the three properties i.e. the present suit property, the property mentioned in the mortgage deed dated nil registered on 12.07.1996 and the property mentioned in the judgment and decree dated 05.08.2011 are different properties."

5. The aforesaid application has been dismissed by the trial Court by the impugned order.

6. The learned counsel representing the petitioner submits that the plaintiff only wants to assert that Smt. Maya Kaur got possession of the property under the garb of the judgment and decree dated 05.08.2011 and all

the three properties mentioned in the mortgage deed, judgment and decree and the properties in possession of the petitioner, are different.

7. On the other hand, the learned counsel representing the respondent submits that the plaintiff while filing the original plaint as well as the amended plaint, which was allowed on 22.08.2014, has already pleaded that all the three properties referred to above are different. He submits that hence, the amendment could not be allowed.

8. The learned counsel representing the petitioner admits that the plaintiff has already incorporated in his pleading the fact that the properties are different, however, he submits that the alleged dispossession of the petitioner under the garb of decree dated 05.08.2011 is illegal, null and void. It may be noted here that the aforesaid decree was passed against the petitioner's father (Sh. Parkash Chand).

9. Keeping in view the aforesaid facts, the trial Court is directed to proceed to decide the suit. However, if the Court comes to a conclusion that the petitioner was wrongfully dispossessed under the garb of judgment and decree dated 05.08.2011, the Court will keep that fact into consideration even if it is not part of the plaint.

10. Disposed of accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

December 12th, 2023

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*