

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

CR-7271-2019(O&M)

Date of decision:-3.2.2023

Swaran Singh

...Petitioner

Versus

Sarabjit Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dinesh Nagar, Advocate
for the petitioner.

Mr.Satbir Rathore, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 3.10.2019 passed by the Court of District Judge, Hoshiarpur vide which an application for amendment of the plaint filed by the applicant/appellant/plaintiff had been dismissed.

2. Briefly stated, facts of the case are that plaintiff Swaran Singh had brought a suit against defendants Sarabjit Singh and Hoshiarpur Central Co-operative Bank Ltd., Branch Bhangala, District Hoshiarpur seeking a declaration that the sale deed dated 25.9.2001 and mortgage deed against defendant No.2 are null and void, liable to be set aside and that the plaintiff is owner in possession of land measuring 0 Kanal 8 marlas situated within red line of village Sanyal, Tehsil Mukerian, District Hoshiarpur besides seeking a decree for permanent injunction restraining the defendants from interfering into possession of the plaintiff over such 8

marlas of land.

3. In that suit, the plaintiff had alleged that defendant No.1 was his close friend and on 25.9.2001 defendant No.1 brought the plaintiff to Tehsil Complex Mukerian stating that he wanted to raise some loan from defendant No.2 – bank for his domestic needs; accordingly the signatures of plaintiff were obtained upon sale deed dated 25.9.2001 and mortgage deed was executed in favour of defendant No.2 by an act of inducement by defendant No.1. According to the plaintiff no consideration amount had been received by him from defendant No.1 and he had not executed any mortgage deed in favour of defendant No.2 and further he had not transferred possession of the suit land to defendant No.1 and when the defendants refused to concede his claim, he had filed a civil suit in the Civil Court at Mukerian.

4. On getting notice, both the defendants appeared and subsequently defendant No.2 stopped putting in appearance and was proceeded against ex-parte. In the written statement filed by defendant No.1, he raised various legal objections, on merits contending that the plaintiff had sold the suit land to defendant No.1 vide registered sale deed dated 25.9.2001 for a valuable consideration, transferring its possession to defendant No.1 and now defendant No.1 is owner in possession of the suit land on the basis of that sale deed with which the plaintiff has no concern; the story put up by the plaintiff is wrong. The mortgage deed is also defended to be legal and valid document. Such defendant prayed for dismissal of the suit.

5. No replication was filed. Issues on merits were framed.

6. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Mukerian vide judgment and decree dated 22.2.2019 dismissed the suit of the plaintiff with costs.

7. The plaintiff felt aggrieved and filed an appeal before District Judge, Hoshiarpur, notice of which was given to respondents/defendants, who put in appearance through counsel.

8. During the course of proceedings before the First Appellate Court of District Judge, Hoshiarpur, the appellant/plaintiff had filed an application for amendment of the plaint contending that in the original suit, he could not seek recovery of Rs.2,60,000/- i.e. amount of sale consideration in alternative. The reason for not seeking that relief was that counsel representing the appellant/plaintiff before the trial Court did not draft the plaint in that manner seeking alternative relief of recovery of Rs.2,60,000/- and that this amendment is very much necessary for just and proper decision of the matter in issue.

9. The application was opposed on behalf of respondents.

10. Vide the impugned order dated 3.10.2019 the said application was dismissed. For ready reference, the operative part of the impugned order runs as follows:

5. I have considered the arguments advanced before me. I have also gone through the lower court record carefully. Swaran Singh applicant filed suit for declaration vide which he challenged the sale-deed dated 25.9.2001 and mortgage-deed against defendant No.2 as illegal, null and void, liable to be set aside and claimed his ownership regarding the said land alongwith the relief of

permanent injunction. In the said plaint it has been pleaded that the defendant No.1 got his signatures on the sale-deed and mortgage-deed in favour of defendant No.2 by way of inducement and no money was paid to him. It was pleaded that the said sale-deed and mortgage-deed are illegal, null and void and the same are liable to be set aside. The suit was filed by the plaintiff on 8.7.2013. The written statement was filed and after recording evidence of both the parties, the case was ultimately decided on 22.2.2019. All the facts and circumstances of the case were fully known to the applicant/appellant/plaintiff. He has filed the suit for declaration on 8.7.2013 challenging the sale-deed dated 25.9.2001 after period of 11 years and 10 months. Now when the appeal is filed on 19.3.2019 and the case was fixed for arguments, the present application for amendment of the plaint has been filed. The applicant has failed to give any justification why the pleadings were not amended when the case remained pending before the lower court for so many years. The authority relied upon by the applicant cited in 2014 (3) Civil Court Cases page 29 Andhra Pradesh High Court (Supra) pertains to the amendment application when the case was still pending before the trial court. In the case in hand, the amendment application has been filed after filing the appeal against the impugned judgment and decree dated 22.2.2019. At this belated stage the proposed amendment is not justified. Therefore, I do not find merits in the amendment application filed by the applicant and the same is accordingly declined.

11. This order left the appellant/plaintiff aggrieved and he has filed the present revision petition, notice of which was issued to the respondents and respondent No.1 has put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record and I find that the revision petition is absolutely without merit.

13. The proviso to Order 6 Rule 17 CPC clearly provides that '*no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial*'.

14. The appellant/plaintiff has not filed the application after conclusion of trial in the first Court and pronouncement of judgment by it, rather during pendency of the proceedings before the First Appellate Court. No cogent or convincing reason could be given for gross delay in filing of the application. The Court has certainly not come to the conclusion that in spite of due diligence, the appellant could not have raised the matter before the commencement of trial or at an earlier stage, rather the learned District Judge, Hoshiarpur has observed that the proposed amendment is not justified at such a belated stage and dismissed the application.

15. It may be observed here that the trial Court while deciding the suit on merits in para No.35 of the judgment has observed that there is recital in the sale deed dated 25.9.2001 Ex.D2 that Rs.10,000/- had already been received at the time of execution of agreement to sell dated 16.4.2001 and out of Rs.2,60,000/-, Rs.1,87,500/- were paid by way of

bank draft bearing No.65121 dated 10.9.2001 by the plaintiff to defendant No.1 and remaining amount i.e. Rs.62,500/- were paid in cash by the plaintiff to defendant No.1 and possession had also been delivered to defendant No.1.

16. The proposed amendment is hopelessly time barred also in terms of judgment **Jagmal Singh Versus Smt.Mehma Devi, 1999(1) RCR(Civil)76** wherein it has been observed that amendment of plaint to incorporate time barred claim cannot be allowed. Similarly, in judgment **Prem Chand Versus Chetan Dass, 2006(1) RCR(Civil)164**, it was held that the power to allow amendments is meant to be exercised only in appropriate cases in the interest of justice and with great care and caution.

17. Therefore, no fault can be found with the impugned order declining the request of appellant/plaintiff for amendment of plaint during the proceedings before First Appellate Court. The order passed in that regard is quite detailed and well reasoned and it does not suffer from any illegality or infirmity. No reason is there to interfere with it by exercising revisional jurisdiction.

18. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.2.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No