

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

262

CR-172-2019(O&M)

Date of Decision:02.08.2023

ABDUL SHAKOOR(DECEASED) THROUGH LRS

....Appellant

Versus

KAUSAR PARVEEN AND ORS

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ghulam Nabi Malik, Advocate for the petitioner.

Mr. H.P. Singh, Advocate for
Mr. D.S. Malwai, Advocate
for respondents No. 1 and 2.

SANJAY VASHISTH, J.(Oral)

1. Present petition has been filed by the legal representatives (petitioners herein) of Abdul Shakoor-deceased(original plaintiff), challenging the impugned order dated 29.11.2018, passed by learned Additional Civil Judge (Junior Division), Malerkotla, District Sangrur, whereby application moved by the petitioners/legal representatives under Order VI Rule 17 of CPC for amendment of the plaint was dismissed.

2. Abdul Shakoor-deceased (original plaintiff) instituted the suit for joint possession in April, 2012 to the extent of 1/18th share out of the total land mentioned in the plaint, as suit property. Learned counsel for the petitioners also submits that there was a challenge to the written gift deed 29.11.2001 executed in favour of defendants No.

1 and 2. Abdul Shakoor expired on 10.10.2013 and thereafter, his legal representatives i.e. petitioners herein stepped into the shoes of the plaintiff.

3. At the stage of rebuttal evidence, petitioners/ Legal representatives No. 7 and 8 moved an application under Order VI Rule 17 CPC for making amendment in the plaint to the effect that in the suit, there is no challenge to the oral gift deed dated 30.10.2001 and said fact is required to be introduced in the pleadings.

4. During the course of arguments, Mr. Malik, learned counsel for the petitioner while reading out the copy of the written gift deed admits that in the contents of the said written gift deed, there is mentioning of the oral gift deed dated 30.10.2001 also.

5. The application filed by the applicant was dismissed vide order dated 29.11.2018 by making following observations:

*'Present: Sh. Suraj Siani, Adv counsel for plaintiff
Sh. Shadab Ul Haq, Adv counsel for LRs
No. 7 and 8.*

Defendant no.3 to 8 exparte.

Argument heard on the application filed by LRS No.7 and 8 of deceased plaintiff Abdul Shakoor under order 6 Rule 17 CPC on the ground that they want to challenge oral gift dated 30.10.2001 which was inadvertently not challenged by their father at the time of filing original suit. This court is of the considered view that although law regarding amendment is very liberal in nature but it is the duty of this to decide as to whether amendment sought is required for the just decision of the case and whether facts in which the party sought to be incorporated by way of amendment, were in the knowledge of concerned party. In the present case, original suit was filed by deceased Abdul Shakoor and applicant i.e. LR no. 7 and 8 along with remaining LRs were impleaded in the present suit to pursue with the case. Therefore, the plea which was not originally taken by deceased Abdul Shakoor himself now can not be permitted to be raised by his

legal heirs. Moreover, plaintiffs have already filed application for amendment of their plaint two times earlier also but at the time, no such fact was brought into the knowledge of this court. Hence, application filed by the LRS No.7 and 8 of deceased plaintiff Abdul Shakoor is not maintainable being filed at belated stage and same stands dismissed. Case is adjourned for 06.12.2018 for rebuttal evidence if any and arguments.'

6. After considering the circumstances in its totality, this Court is of the view that that during the lifetime of the plaintiff/ Abdul Shakoor, when the cause of action to file suit arose, he was the best person to acknowledge the complete facts. During his lifetime, two attempts were made for seeking amendment in the plaint, in which he is stated to have failed.

7. The Legal Representatives, who are now stepping into the shoes of the plaintiff/Abdul Shakoor cannot be expected to have better knowledge than their father. In fact, with the legal representatives, the cause of action has arisen only for the purpose of pursuing the proceedings of the suit that too after the death of the plaintiff /Abdul Shakoor.

8. Since, already two times, the applications have been filed by the plaintiff/Abdul Shakoor and no such fact was pleaded by him in the said applications for amendment, now, again on the ground of introducing the fact which was already well within the knowledge of the plaintiff/Abdul Shakoor, permission to amend the plaint cannot be allowed.

9. Moreover, Mr. Malik, learned counsel for the petitioner has admitted that on the basis of the written gift deed dated 29.11.2001, mutation was entered and said gift deed and mutation are already under challenge in the suit. The effect of mentioning of factum of oral gift deed alongwith its date in the said document, would ofcourse, be an argument available to the concerned party at the relevant time.

10. Accordingly, this Court does not find any substance to interfere with the impugned order. Accordingly, present revision petition stands dismissed.

11. Trial court is directed to proceed with the trial.

12. A copy of this order be forwarded to the trial court concerned for information and compliance.

13. However, it is made clear that there is no need to pass any order in the application i.e. CM-530-CII of 2019 for placing on record the documents, as the main petition has already been considered and decided on merits.

14. Disposed of.

[SANJAY VASHISTH]
JUDGE

August 02, 2023
rashmi

Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no