

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 8075/2019

Date of decision:23/01/2023

Ram Niwas

.....Petitioner.

Vs.

Nihala

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yagsimant Attri, Advocate for the petitioner.
 Mr. Vinod Bhardwaj, Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/
plaintiff seeking setting aside of the order dated 21.11.2019 (Annexure P-6)
passed by the Ld. Addl. Civil Judge (Sr. Div.) Guhla whereby the application
dated 7.5.2019 filed by the petitioner for amendment of the plaint has been
dismissed.

Brief facts of the case are that the petitioner/plaintiff filed a
suit for specific performance of the agreement to sell dated 18.12.2015 against
the respondent/defendant, or in the alternative for a decree of recovery of Rs.8

lacs (Rs. 4 lacs paid to the respondent as earnest/ advance money, plus Rs. 4 lacs as liquidated damages) along with interest @ 18% per annum.

Learned counsel for the petitioner submits that prior to entering into Agreement to Sell dated 18.12.2015 with the respondent, the petitioner had duly verified the relevant jamabandi for the year 2013-14, wherein the respondent was shown as sole owner-in-possession of the suit property. It is submitted that the petitioner also had knowledge that the suit land was already mortgaged with the Bank and it was agreed that the respondent will get the above said land redeemed from the mortgage prior to the date fixed for execution and registration of the sale deed, which is 15.12.2016. It is further submitted that it was only when the respondent finally refused on 24.2.2017 to execute the sale deed that the petitioner was left with no alternative but to file the present suit.

It is submitted by learned counsel for the petitioner that there was no reason to suspect, and accordingly petitioner had no knowledge of the fact that during this time the respondent had transferred the suit property in the names of his sons. Learned counsel submits that even in the written statement dated 'Nil', filed by the respondent to the present suit, it was never divulged by the respondent that he was not the owner of the suit property, or that he had transferred the suit land in the names of his sons.

It is submitted by learned counsel that it is only on 2.5.2019 when the petitioner approached the Halqa Patwari of Village Bhagal for obtaining latest certified copy of the jamabandi in respect of the suit land for tendering it in evidence, that the petitioner discovered that during this intervening time the respondent had transferred the suit land in favour of his sons namely Vikram and Vikas by way of transfer deed 788/I dated 6.6.2016

and that on the basis of which even mutation no. 8276 had been entered and sanctioned.

It is submitted that it is in this background that the petitioner had filed his application dated 7.5.2019 for amendment of the plaint (Annexure P-4) It is submitted that this application for amendment of the plaint, is necessitated in view of the new facts discovered by the petitioner during the pendency of the suit. However, the learned trial court has failed to appreciate the situation and has incorrectly and illegally dismissed the petitioner's application for amendment.

It is submitted by learned counsel for the petitioner that accordingly, the impugned order is perverse, illegal and that the reasoning of the Ld. Trial Court is contrary to the record and therefore, the same deserves to be set aside. It is submitted by learned counsel that he had exercised due diligence and verified the ownership of the respondent over the suit land and therefore, the observation of the Ld. Trial Court that the defendant had revealed the factum of ownership of his sons over the suit land but the petitioner had failed to verify the same, is incorrect.

In response, learned counsel for the respondent/defendant refers to para 5 of the written statement wherein it is stated as follows: -

"5. That the defendant is not the owner of the suit land nor had any right to sell the same. The sons of the defendant who are the owners are the necessary parties. Suit is liable to be dismissed for non-joinder of necessary parties".

It is submitted that the petitioner filed the suit without verifying the factum of ownership and therefore, now he cannot be permitted to improve his pleadings by way of present amendment.

On a specific query by this Court as to whether transfer was effected by the respondent, learned counsel for the respondent admits that suit property was transferred by the respondent vide Transfer Deed dated 6.6.2016.

No other argument has been advanced on behalf of the parties.

Heard Ld. Counsel for the parties.

By way of present suit petitioner was seeking specific performance of the agreement to sell dated 18.12.2015. Petitioner had entered into agreement to sell with the defendant/respondent as, as per jamabandi for the relevant time/ year 2013-14, wherein respondent was shown as sole owner in possession of the suit property to the extent of his share. Said Jamabandi was also duly attached with the plaint. Nothing to the contrary was revealed by the respondent in his reply to the civil suit filed by the petitioner even though, in the meantime, the respondent had transferred the suit land in the names of his sons.

Written statement dated Nil filed by the respondent to the present civil suit, shows that in para 3 of the pre-objections, it has only been stated as follows:

“3. That the suit land is joint Hindu Family/ Coparcenary/ ancestral property in the hands of the defendant and Vikram Singh and Vikas are two sons of the defendant. Vikram Singh is major, Vikas is also having age of 16 years. However, he is also having full senses to understand his loss and benefits. They being coparcener have never consented to sell the land in suit, although the agreement in question is a result of fraud. In any case, the proposed agreement to sell is not in the interest of entire family of which defendant is Karta and his both the sons are coparcener. Even the daughter is also a coparcener. There is no legal necessity to sell the land at

any cost. Nor the sale of the land is in the interest of the entire family and the coparcenary including the sons. Even otherwise the same is not an act of good management. There is no pressure upon the estate to sell the land. So the present suit is liable to be dismissed and equitable relief of specific performance cannot be decreed”.

From a reading of the above, it is clear that there is not a whisper about transfer of the suit land by way of Transfer Deed dated 6.6.2016.

Reference may also be made to Annexure P-3, the replication dated 7.11.2017 filed by the petitioner to the above said written statement wherein in reply to para 3 of the aforementioned pre-objections, the petitioner has stated that *“pre-objection no.3 is wrong and denied. It is wrong that the suit land is joint Hindu/coparcenary/ancestral property in the hands of defendant. Defendant executed agreement to sell in favour of the plaintiff with his free will and consent, for his personal necessity and to clear his loan etc. Defendant has already sold his land to different persons vide different sale deeds”.*

It is therefore, clear that even at time of filing replication, petitioner had no reason to suspect of the transfer effected by the respondent as nothing to this effect was revealed by the respondent in his written statement. No doubt, as noticed above, the respondent in para 5 of his written statement has denied being the owner of the suit land and has taken the plea that sons of the defendant were owners of the suit property, however, no document of title in favour of sons of the defendant was pleaded in the written statement nor any such document was attached with the written statement.

Thereafter, the petitioner tendered his affidavit (evidence-in-chief) as PW-1, and also examined another witness by tendering his affidavit.

It was only on 2.5.2019 when the petitioner approached the Halqa Patwari of Village Bhagal for obtaining latest certified copy of the jamabandi in respect of the suit land for tendering it in evidence, that the petitioner discovered from the revenue records that the suit land stood transferred in the name of the sons of the respondent vide Deed of transfer dated 6.6.2016. In view of the newly revealed facts, the petitioner's application for amendment deserves to be allowed.

In my view the petitioner had exercised due diligence in verifying ownership of the suit land by way of relevant jamabandi for the year 2013-14. It is but trite to suggest that if the suit land was joint Hindu family/coparcenary/ ancestral in nature, as claimed by the respondent in his written statement, then the ownership of the respondent's sons also ought to have been reflected in the said jamabandi as co-owners of the suit property. It also follows that then there was no occasion for the respondent to transfer the suit land in their names vide Transfer Deed of 2016.

Further, as per judgment of the Hon'ble Supreme Court in **Sampath Kumar v Ayyakannu and another, Law Finder Doc Id # 2224**, their Lordships have held that amendment of the plaint should be allowed to curtail multiplicity of proceedings. Hon'ble Supreme Court has held that the Courts should be liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In my view, in the present case the petitioner could not have raised the pleas sought to be made by way of amendment, before commencement of the trial despite exercise of due diligence on his part. Further in the present case in my view, no serious injustice or irreparable loss would be caused to the respondent by

permitting the present amendment. In fact, it will save multiplicity of proceedings.

Accordingly, present revision petition is allowed and the order dated 21.11.2019 (Annexure P-6) passed by the Ld. Trial Court is set aside; and petitioner is allowed to amend plaint as prayed for in his application dated 7.5.2019 (Annexure P-4).

However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the matter.

23/01/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No