

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2989 of 2019(O&M)

Date of decision :14.03.2024

Jasmer Singh and another

...Petitioners

Vs.

Sajjan Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankush Singla, Advocate
for the petitioners.

Mr. Pritam Singh Saini, Advocate and
Mr. Sanjay Saini, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

1. The decree-holders have filed this revision petition to assail the correctness of trial Court's order refusing to permit correction of a typographical mistake in the prayer of the plaint, which has resulted in a typographical error in the judgment.
2. In order to comprehend the issue involved in the present case, the relevant facts in brief are required to be noticed.
3. The plaintiffs have made some assertions in para 1 of the plaint while filing the suit for grant of decree of possession and the para reads as under:-

“That the plaintiffs are the owners of the land comprising Khewat No. 102/90 Khatoni No. 138, Khasra No. 3//11 (7-12), situated in Village Roshanpur Jhungian, Sub Tehsil Dudhan Sadhan, District Patiala as per

Jamabandi for the year 2006-2007 alongwith the land comprising Khasra No. 3//12 (8-0) situated in Village Roshanpur Jhungian, Sub Tehsil Dudhan Sadhan, District Patiala. Copy of Jamabandi for the year 2006-2007 issued by the Patwari Halqa is appended herewith.”

4. The plaintiffs prayed for grant of decree of possession. However, in the prayer clause, the land comprised in Khasra No. 3//12(8-0) was omitted inadvertently. The defendant No.1 also filed a counter-claim. The defendant No.1 in para 1 of the counter-claim pleaded as under:-

“That the defendant no.1/counter claimant is in peaceful, continuous, uninterrupted possession of the land bearing kh.no.3//11/7-12, and kh.no.3//12/8-0, total measuring 15K- 12 marlas, as mentioned in the heading of the counter claim, since May, 1978. The said land was occupied by the defendant no.1/counter claimant, when the same was lying vacant, and since then the defendant no.1/counter claimant is in continuous possession of the same.”

5. On the basis of the pleadings of the parties, the following issues were framed by the trial Court vide order dated 16.11.2010:-

1. *Whether the plaintiffs are entitled to possession of agricultural land as prayed for? OPP*
2. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
3. *Whether the suit is not maintainable? OPD*
4. *Whether plaintiffs have no cause of action, to file the present suit? OPD1*
5. *Whether the plaintiffs have not come to the Court with clean hands? OPD1*
6. *Whether the defendant no.1 in peaceful, continuous and uninterrupted possession of land in question and*

have become owner of the same by way of adverse possession?OPD1

7. *Whether the defendant no.1/counter-claimant is in peaceful, continuous and uninterrupted possession of land bearing Khasra No.3//11/7-12, and Kh.No.3//12/8-0, total measuring 15K-12 Marlas, since 1978 and have become owner of the same by way of adverse possession? OPD1/counter claimant*

8. *Relief.*

6. The suit filed by the plaintiffs was decreed whereas, the counter-claim filed by the defendants was dismissed. Subsequently, the plaintiffs filed application under Section 153 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') for permission to amend the claim to correct the inadvertent typographical mistake with reference the land comprising Rectangle No.3, Khasra No. 12(8-0), which has been dismissed by the trial Court on the ground that after the decision of the case amendment in the plaint is not permissible.

7. The correctness of the aforesaid order has been challenged in this revision petition.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

9. On the one hand, the learned counsel representing the petitioners while referring to the aforesaid facts submits that the trial Court has erred in refusing to permit the amendment. On the other hand learned counsel representing the respondents submits that the land comprised in Rectangle No.3, Khasra No. 12(8-0) has neither been incorporated in the caption nor in the prayer clause of the plaint. He submits that now at this stage, the amendment should not be permitted.

10. This Court has considered the submission of learned counsel representing the parties. It is evident that both the parties were aware of the fact that the suit has been filed with respect to two different Khasra numbers, namely, Rectangle No.3, Khasra No.11(7-12) and Rectangle No.3, Khasra No.12(8-0) as specified in para 1 of the plaint. The defendant No. 1 while filing the counter-claim also referred to the land comprising Rectangle No. 3, Khasra No. 12(8-0). It was specifically mentioned that the total land involved in the present dispute is 15 kanals and 12 marlas. Moreover, the trial Court in issue No. 7 has also referred to land comprised in Khasra No.3//11/7-12, and Khasra No.3//12/8-0, total measuring 15 kanals and 12 marlas. Thus, it is evident that the parties were conscious of the fact that the dispute is with respect to 15 kanals and 12 marlas land, which also includes land comprising Rectangle No.3, Khasra No.12(8-0).

11. In these circumstances, it is safe to conclude that in the prayer clause inadvertently the land comprised in Rectangle No.3, Khasra No.12 (8-0) was omitted. Section 153 of the CPC enables the Court to permit the parties to correct the typographical omissions. Section 152 of the CPC enables the Court to correct clerical or arithmetical mistakes in judgments, decree or orders or from the error arising therein from any accidental slip or omission. Section 153 of the CPC enables the Court to exercise its general power to amend at any point in time but for such application, there is only one pre-condition that such amendment should be necessary for the purpose of determining the real question or issues raised by the parties to the dispute.

12. In the considered opinion of the Court, the amendment sought by the plaintiff is arising from an accidental omission and the trial Court has erred

in dismissing the application.

13. Hence, the revision petition is allowed.

14.03.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes	No
Yes	No