

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3477 of 2019 (O&M)
Reserved On: 11.01.2024
Pronounced On:13.02.2024

Jaswinder Singh and another

.Petitioners

Versus

Satpal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Pratap Singh, Advocate
Mr. Namish Sodhi, Advocate
Mr. Vishal Singh, Advocate
for the petitioners.

Mr. Sudhir Rana, Advocate
for respondent no.1 and 2.

Ms. Sonia G. Singh, Advocate, for respondent no.7.

ANIL KSHETARPAL, J

1. In this revision petition, defendants no.1 and 2, call in question the correctness of the interlocutory order passed by the Civil Judge (Jr. Divn.) Asandh, on 07.12.2018, while permitting defendants no.7 1(i) to (iv) and defendant no.8(i) to file their written statement afresh.

2. It is significant to note that on 28.04.2017, the learned counsel representing defendants no.3 to 8, adopted the already filed written statement of defendant nos.1 and 2. After the pleadings were complete, the trial court proceeded to cull out the issues arisen between the parties and the plaintiffs led their evidence. The defendants have also led their evidence to some extent.

3. Defendants no.7 (i) to (iv) and 8(i) filed an application for permission to file written statement on their behalf alleging that their uncles

i.e. defendants no.3 to 6 have colluded with defendants no.1 and 2 and adopted the written statement without their knowledge and hence they wish to file fresh written statement. The aforesaid application has been allowed by the court with the following observations:-

“Though there is no scheme in the CPC for filing the second written statement but owing to peculiar facts of the present case that defendants are themselves questioning the act of the counsel engaged by them. Therefore, in order to keep the faith of the common people in the system, defendants are allowed to file their written statement.”

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

5. In order to comprehend the controversy involved in the present case, the relevant facts, in brief, are required to be noticed.

6. Late Sh. Shisha Singh, the predecessor-in-interest of defendant nos.3 to 8, was owner of 1 kanal and 19 marlas land which was leased in favour of Sh. Gurdeep Singh (predecessor-in-interest of plaintiffs) and Sh. Kartar Singh (predecessor-in-interest of defendant no.1). The period of lease was to commence from 16.10.1969 to 15.10.2028. It is the case of the plaintiffs that subsequently Sh. Kartar Singh transferred his lease hold rights in favour of Sh. Gurdeep Singh vide court decree dated 23.01.1973. In the year 1969, a fuel station was installed on land measuring 1 kanal and 10 marlas comprised in khasra no.1588/1. The plaintiffs (successor-in-interest of Sh. Gurdeep Singh) purchased land measuring 0.05 marla vide sale deed dated 24.01.1985. They constructed a building on remaining land i.e. 9

marlas out of the leased property and property which was purchased vide sale deed dated 24.01.1985. Subsequently, plaintiff no.2, also executed a sub lease in favour of plaintiff no.1 on 04.11.2018.

7. It is the case of the plaintiffs that subsequently defendant no.1 in collusion with defendant no.2 (Sh. Bhupinder Singh) manipulated a release deed from defendants no.3 to 8, on 21.11.2012, validity whereof was not only challenged in a civil suit but FIR was also registered. Ultimately a civil suit was comprised resulting in its withdrawal on 24.07.2015. The plaintiffs (successors-in-interest of Sh. Gurdeep Singh) filed civil suit for grant of decree of declaration with a consequential relief of permanent injunction claiming that they are in exclusive possession of the property being lessees and owner of 0.5 marla and the release deed dated 21.11.2012 is illegal, null and void. The defendants should be restrained from interfering in their possession. Defendants no.1 and 2 filed a detailed written statement contesting the suit. On 28.04.2017, the learned counsel representing defendants no.3 to 8, stated as under:-

“Statement of Sh. R.P.S.Bhatia, Adv. for defendants no.3 to 8.

Stated that the written and reply filed by the defendant no.1 and 2 should be read as been filed by the defendant no.3 to 8.”

8. However, subsequently, as already noticed, defendants no.7(i) to (iv) and defendants no.8(ii) filed applications.

9. On careful reading of application filed by defendants no.7(i) to (iv) and 8(ii), it is evident that they now wish to take a U-turn on their stand which was previously taken. In the application, it has been alleged that

defendants no.3 to 6 have colluded with defendants no.1 and 2 and made certain admissions which are factually incorrect including the date of death of their grand father Sh. Shisha Singh. Now the defendants no.7(i) to (iv) and 8(ii) wish to take a stand that the release deed dated 21.11.2012, is null and void because the same is result of manipulation on the part of defendants no.1 and 2.

10. As is evident, the trial court has failed to comprehend the controversy involved in the application. If defendants no.7(i) to (iv) and 8(ii) are permitted to file fresh written statement, it would result in permitting them to take stand contrary to the stand which has already been taken by them by adopting the written statements of defendant nos.1 and 2. The court has failed to realize that now there is divergence in the different stands amongst the various legal representatives of Sh. Shisha Singh. As already noticed, the plaintiffs have already led their evidence and the defendants have also led some part of their evidence. Consequently, the case is at the advance stage.

11. In such circumstances, it was not appropriate for the court to allow the application without examining the contents of the application and the purpose for which fresh written statement is sought to be filed. The application filed by defendants no.7(i) to (iv) and 8(ii) do not dispute that they engaged Sh. R.P.S. Bhatia, Advocate, who suffered statement on 28.04.2017. Consequently, the impugned order suffers from material error which is nearing perversity. At least, the trial court was expected to understand the controversy involved in the present case before passing the impugned order.

12. Consequently, the impugned order is set aside while permitting

the trial court to pass a fresh order after giving opportunity of hearing to the parties.

13. With these observations, the revision petition is allowed.
14. All the pending miscellaneous applications, if any, are also disposed of.

13th February, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO