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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4523-2024
Date of decision: 29.08.2024

Shokinder Singh Kora ...Petitioner

Versus

Rajwinder Kaur and another ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chetan Bansal, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 09.07.2024 (Annexure P-1) passed by the Civil Judge (Junior Division), Kharar, vide which an application filed by the petitioner under Order VI Rule 17 of CPC for amendment of reply to the application for passing the final decree of partition in the application bearing No.CM/70/2020 titled as “Rajwinder Kaur Vs. Shokinder Singh Kora and another”, has been dismissed.

2. Brief facts of the present case are that respondent No.1 had filed a suit for separate possession of 22/105 share by way of partition of plot comprised in Kh/Kh No.1257/1265 Khasra No.108//3/1 (1-15), Gair Mumkin plot/Makan situated within the municipal limits of Municipality Kharar, Tehsil Kharar, District Mohali. In the said suit, further prayers for mandatory injunction directing defendant No.1/petitioner (hereinafter to be referred as defendant No.1) to remove the room constructed by him at point ‘A’ and to remove the gate fixed at point ‘B’ in the passage and for permanent



injunction restraining the defendants from raising any type of further construction, were also made. The present petitioner was impleaded as defendant No.1 in the said suit and the wife of the present petitioner was impleaded as defendant No.2. Although, written statement filed by the petitioner and his wife-defendant No.2 had not been annexed with the present revision petition but a perusal of the judgment dated 07.03.2020 (Annexure P-2) more so para 3 of the same would show that the petitioner as well as defendant No.2 had filed a joint written statement opposing the suit filed by respondent No.1 on various grounds including maintainability, concealment of material facts and locus standi. It was nowhere stated in the said joint written statement that the share of the petitioner or his wife be also partitioned. On a pointed query raised by this Court, learned counsel for the petitioner has not disputed the said fact.

3. A preliminary decree dated 07.03.2020 was passed by the Civil Judge (Junior Division), Kharar and the following relief was granted:-

*“17. In view of the discussions made above, the suit of the plaintiff is **partly decreed with costs. The plaintiff is entitled to possession by way of partition of suit land to the extent of 22/105 in the Jamabandi for the year 2011-12 of plot comprised in Kh/Kh no.1257/1265 Khasra no.108//3/1 (1-15), Gair Mumkin plot/Makan situated within the municipal limits of Municipality Kharar, Tehsil Kharar, District Mohali.***

18. The relief of Permanent injunction and Mandatory Injunction stands declined. Decree sheet be drawn up accordingly. File be consigned to the Record Room”

4. A perusal of the above decree would show that only the share of the plaintiff was determined which was stated to be 22/105 and since, the



petitioner and his wife-defendant No.2, who had filed a joint written statement had not sought for separation of their share thus, no preliminary decree with respect to determining their share was passed. On 16.07.2020, respondent No.1 had filed an application (Annexure P-3) for passing a final decree of partition by way of separating the share of respondent No.1/deGREE holder. The same was sought in pursuance of the preliminary decree dated 07.03.2020. A joint reply dated 21.05.2022 (Annexure P-4) was again filed by the petitioner and his wife-defendant No.2 opposing the said application. A report of the Kanungo, who was the Local Commissioner, was submitted on 28.04.2023 and a perusal of Annexure P-5 would show that the objections have been raised jointly on behalf of the petitioner and defendant No.2 to the said report. However, subsequently, an application (Annexure P-7) was filed by the petitioner as well as defendant No.2 for amendment of the reply to the application for passing final decree of partition by incorporating the following lines:-

“In case the court comes to the conclusion that the share of the applicant is to be separated then in that event the share of the respondents be also separated from each other and the separate shares be allotted to both the respondents separately. The passage be provided to their respective shares allotted to them. The possession of respondent no.1 be kept intact at the time of passing of final decree and allotting the share to Respondent no.1 in the suit property.”

5. In the abovesaid paragraph, it was pleaded that the share of the defendant Nos.1 and 2 be also separated from each other. A reply to the said application (Annexure P-8) was filed highlighting the fact that the petitioner and defendant No.2 are husband and wife and are joint in residence and mess



and they had moved the application under Order 6 Rule 17 CPC only to delay the proceedings.

6. The trial Court vide impugned order dated 09.07.2024 (Annexure P-1) dismissed the said application by observing that the amendment is being sought after much delay and there was no due diligence in seeking the amendment and thus, the case is hit by the proviso of Order 6 Rule 17 CPC. It was also observed that a joint written statement had been filed in the suit for partition by the petitioner and defendant No.2 and the fact that there were separate sale deeds in favour of the petitioner and defendant No.2 were in their knowledge at the time of filing of the said reply to the main suit as well as reply to the application for final partition and it could not be said that inadvertently the plea now sought to be raised could not be incorporated in the abovesaid replies. It was further observed that the said application could not be allowed at such a belated stage.

7. Learned counsel for the petitioner has submitted that in the present case, the petitioner and respondent No.2 had purchased the property vide two separate sale deeds and thus, their share be also permitted to be partitioned and it is the said pleading which the petitioner wishes to incorporate in his reply.

8. This Court has heard learned counsel for the petitioner and has perused the paper book.

9. It could not be disputed by the petitioner that the petitioner and defendant No.2 are husband and wife and they had filed joint written statement in the main suit which was filed by respondent No.1 for separate possession of his 22/105 share by way of partition and that in the said joint



written statement, the suit was opposed and there was no prayer made for separation of the share of defendant Nos.1 and 2 as well. On account of the said pleading of the parties, preliminary decree only declaring the share of the plaintiff being 22/105 in the suit land was passed. No decree declaring the share of the petitioner as well as defendant No.2 was passed. Nothing has been shown to this Court that judgment dated 07.03.2020 (Annexure P-2) was further challenged by the petitioner or defendant No.2. It is a matter of settled law that final partition is to be carried out in pursuance of the preliminary decree passed and thus, the Court in the proceedings for passing of the final decree in the present case is proceeding to separate the share of the respondent/plaintiff in the suit land to the extent of 22/105. Even in the reply dated 21.05.2022 (Annexure P-4) to the application for passing the final decree of partition by way of separating the share of the applicant/decreed holder, no plea was taken that the share of the petitioner/defendant No.2 be also determined and the same be also separated. It is not in dispute that the report of the Local Commissioner dated 28.04.2023 has also been submitted and even the objections (Annexure P-5) have been filed by the petitioner and defendant No.2 to the said report and thus, the subsequent application for amendment filed by the petitioner and defendant No.2 i.e., husband and wife is apparently only to delay the proceedings. Moreover, pleas which are sought to be raised in the application for amendment were in the knowledge of the petitioner at the time of filing of the written statement to the main suit as well as while filing the reply to the application for final partition and thus, it cannot be said that in spite of due diligence, the said plea could not be raised prior to the commencement of the



trial. Proviso to Order 6 Rule 17 CPC specifically provides that 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, amendment is not to be allowed. In the present case, it could not be disputed that the pleas sought to be raised in the application for amendment was in the knowledge of the petitioner and defendant No.2 even prior to the commencement of the trial whereas application for amendment has been filed after passing of the preliminary decree and even after substantial progress had taken place in the proceedings with respect to the application dated 16.07.2020 (Annexure P-3) for final partition in the case.

10. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the impugned order dated 09.07.2024 (Annexure P-1) is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

11. It is made clear that the observations made in the present order is only for the purpose of determining the legality or otherwise of the impugned order rejecting the amendment application filed by the petitioner and should not be construed as a final expression on the merits of the case and the trial Court would proceed to decide the case as well as the objections filed by the petitioner independently and in accordance with law.

29.08.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No