

(2001) 11 P&H CK 0120

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4987 of 1999

Om Parkash

APPELLANT

Vs

Ram Parkash and
Another

RESPONDENT

Date of Decision: Nov. 2, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 115, 151

Citation: (2002) 2 CivCC 480 : (2002) 1 RCR(Civil) 357

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Gopi Chand, for the Appellant; Gorakh Nath, for the Respondent

Judgement

M.L. Singhal, J.

Vide order dated 15.9.1999, Additional District Judge, Sonapat allowed the defendants to amend their written statement in civil suit No. 241 of 1998 titled Om Parkash son of Tulsa Ram son of Jodha Ram resident of village Ganaur v. Ram Parkash son of Kanshi Ram son of Ganpat Ram resident of Village Panchi Gujran, Tehsil Ganuar and Urmil Kumar alias Vimal Kumar, for specific performance of the agreement to sell.

Facts:-

Om Parkash filed suit for specific performance of the agreement to sell dated 12.1.82 against Ram Parkash and Urmil Kumar alias Vimal Kumar defendants with respect to land measuring 2 kanal 8 marla situated in village Bal, Tehsil Ganaur for a consideration of Rs. 10,000/- without any further payment. It was alleged in the plaint that the said land was agreed to be sold by defendant No. 2 Urmil Kumar alias Vimal Kumar to him for a sum of Rs. 10,000/-. Whole of the amount was received by Urmil Kumar alias Vimal Kumar defendant No. 2 at the time of the execution of the agreement. At the time of the execution of the agreement, land was standing in the

name of the custodian. Some instalments were outstanding against defendant No. 2 payable to the custodian. It was agreed between the plaintiff and defendant No. 2 Urmil Kumar alias Vimal Kumar that as soon as he had deposited the entire instalments due and land was mutated in the name of defendant No. 2, he will execute sale deed in his favour and get it registered. It was agreed that he will execute sale deed in his favour and get it registered within a period of one month of the date when mutation was sanctioned in his favour. It was also agreed that the proprietary and actual possession would also be delivered to him. On 7.3.86, mutation No. 810 was sanctioned in his favour qua that land. He, however, failed to execute sale deed in his favour. It was alleged in the plaint that he came to know that Urmil Kumar alias Vimal Kumar had sold the said land to Ram Parkash defendant No. 1 vide sale deed dated 29.1.88 for a consideration of Rs. 6,000/-. He (Plaintiff) was not bound by the said sale in favour of Ram Parkash defendant No. 1. He was entitled to specifically enforce agreement to sell dated 12.1.82 against both the defendants. He was always ready and willing to get the sale deed executed in his favour on incurring the necessary expense required for the purchase of stamp and the expense of registration. He requested Ram Parkash defendant No. 1 also to transfer the land in his favour as he was holding agreement to sell dated 12.1.82 but to no effect.

2. Defendants contested the suit of the plaintiff. It was denied that defendant No. 2 executed any agreement to sell dated 12.1.82. It was denied that he received any amount of Rs. 10,000/-. It was denied that he ever executed any receipt showing the receipt of Rs. 10,000/- by him from the plaintiff. Receipt is false, forged and factitious. Defendant No. 2 did not receive any payment from the plaintiff to be able to pay instalments. He arranged the amount of instalments on his own and paid them to the custodian. Defendant No. 2 after paying the total amount in respect of the land measuring 16 kanal 6 marla obtained sale certificate. Mutation was sanctioned in his favour on 7.3.86. Fact that the plaintiff did not take any step to enforce this agreement for so long shows that no such agreement was executed by defendant No. 2 in his favour. He could never agree to the delivery of possession to the plaintiff as he had leased out the land to defendant No. 1 for a period of 50 years by means of lease deed dated 21.12.81 which was duly registered. Actual possession was with defendant No. 1 as lessee. Defendant No. 2 has sold the suit land to defendant No. 1 for a sale consideration of Rs. 6,000/- by means of sale deed dated 29.1.88 duly registered at the instance of one Des Raj son of Hakim Rai in whose favour the defendant No. 2 had agreed to sell the suit land by means of agreement dated 27.12.81 under which said Des Raj was authorised to get sale deed executed in his favour or in favour of any other person of his choice. It was pleaded that the plaintiff had no right, title or interest in the land in suit.

3. At the conclusion of the trial of the suit, the suit was decreed for specific performance in favour of the plaintiff by Civil Judge (Junior Division), Sonapat. He directed the defendants to execute sale deed with regard to the land in suit in view

of his finding that defendant No. 2 had executed agreement to sell dated 12.1.82 in favour of the plaintiff with regard to the land in suit. It was found that he had received the entire sale money at the time of the execution of the agreement.

4. Defendant Ram Parkash went in appeal. In appeal, Ram Parkash made an application for amendment of the written statement under Order 6 Rule 17 read with Section 151 CPC whereby he prayed that he was bonafide purchaser for consideration without notice. Land in suit is adjacent to the land of defendant No. 1 and he had taken the land in suit on lease for 50 years as he had no other approach to his land except through the land in suit. Vide order dated 15.9.99, learned Additional District Judge, Sonapat allowed Ram Parkash defendant to incorporate the proposed amendment in the written statement.

5. Not satisfied with the order dated 15.9.99 allowing amendment of the written statement by Additional District Judge, Sonapat, Om Parkash plaintiff has come up in revision to this court.

6. It was submitted by the learned counsel for the petitioner (plaintiff) that proposed amendment should not have been allowed as the parties, were before the court of appeal and not before the trial court. It was submitted that a very strong case was required to be made out by the defendant for permission to him to amend the written statement when they were in appeal and when a valuable right had become accrued to the plaintiff in whose favour the suit had been decreed. It was submitted that in appeal such an amendment is not to be allowed as a matter of course. In support of this submission, he drew my attention to Zile Singh and Anr. v. Darkan 1984 PLJ 346; Hans Raj v. Savitri Devi and Ors. 1986 89 P.L.R. 92; Dewan Chand v. Kalyan Dass and Anr. 1987 91 P.L.R. 191 and Mewa and Anr. v. Randhir Singh and Ors. 1989(1) RLR 225 where it was held that amendment at appellate stage should not be allowed as a matter of course. A very strong case is required to be made out by the defendant to be able to incorporate amendment when there was already a decree in favour of the plaintiff. It was submitted that mere mention in that application for the amendment of the written statement that the fact sought to be pleaded through proposed amendment was left to be pleaded due to some inadvertence is not sufficient.

7. It was submitted that no amendment of pleadings can be allowed the effect of which is the introduction of mutually destructive pleas. There can be no quarrel so far as this principle of law is concerned that no amendment of pleadings can be allowed which has the effect of introduction of mutually destructive pleas.

8. In my opinion, the learned Additional District Judge justifiably allowed amendment of the written statement to the defendant as essential facts had already been pleaded by the defendants constituting their pleas. Through amendment of the written statement, only additional plea was sought to be taken namely that Ram Parkash was a bona fide purchaser for consideration without notice of any

agreement in favour of the plaintiff. Defendant No. 1 Ram Parkash pleaded that vide registered lease deed dated 21.12.81, land in suit had been leased out to him by Urmil Kumar alias Vimal Kumar for a period of 50 years. It had also been pleaded that Urmil Kumar alias Vimal Kumar had executed an agreement to sell dated 27.12.81 in favour of one Des Raj. It was vide sale deed dated 29.1.88 that defendant No. 1 purchased this land from Urmil Kumar alias Vimal Kumar at the instance of Des Raj who was holding agreement to sell dated 27.12.81 in his favour and who had the option either to purchase by himself or let his nominee purchase. In this case, learned Additional District Judge has allowed only the amendment. He has not set aside the decree passed by the learned Civil Judge (Junior Division), Sonapat and he has not remanded the case to him. He has only allowed amendment of the written statement. After the plaintiff files replication to the amended written statement, issue will be framed covering the additional plea introduced by way of amendment. On that issue, both the parties will be called upon to produce evidence. Leaned trial court will record evidence on that issue and return the finding on that issue to the learned appellate court together with that evidence. Proposed amendment will warrant them only the partial remand of the case which will not prejudice the plaintiff. Appeal will remain pending before the appellate court. Revision disposed of subject to these observations.