

(2012) 09 P&H CK 0275

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1649 of 2008

Darshan Kaur

APPELLANT

Vs

Pardeep Kumar

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Tribhawan Singla, for the Appellant; Girish Agnihotri with Mr. Vijay Pal, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant No. 2 Darshan Kaur by filing this revision petition under Article 227 of the Constitution of India has assailed order dated 16.2.2008 passed by learned Civil Judge (Junior Division), Ludhiana thereby allowing application Annexure P/3 moved by the respondent-plaintiff Pardeep Kumar for amendment of plaint. Respondent-plaintiff filed suit against defendant No. 2 petitioner and her mother Dan Kaur alias Pritam Kaur defendant No. 1 (since deceased and represented by petitioner as her legal representative) alleging that the defendants agreed to sell suit land measuring 56 kanals 6 marlas to the plaintiff vide agreement dated 17.6.2003. Sale deed for 31/2 acres land i.e. 28 kanals land was to be executed on or before 31.1.2004 and sale deed for the remaining land was to be executed on or before 30.8.2004. The plaintiff has always been ready and willing to perform his part of the contract and asked the defendants to execute the sale deed of 28 kanals land within stipulated period but the defendants postponed the matter as crops were standing and they would not be able to give vacant possession thereof. However, the defendants then threatened to alienate the suit land to third person.

Accordingly, the plaintiff filed suit on 9.3.2004 seeking permanent injunction restraining the defendants from alienating the suit land to any person except the plaintiff.

2. During pendency of the suit, plaintiff moved application dated 4.1.2006, Annexure P/3 for amendment of plaint to also claim the relief of specific performance of the agreement by making necessary consequential amendments in the plaint alleging inter alia that during pendency of the suit, date stipulated in the agreement for execution of sale deed (30.8.2004) had expired and therefore, the plaintiff had become entitled to seek specific performance of the agreement.

3. Defendants by filing reply Annexure P/4 resisted the application pleading inter alia that the relief claimed by amendment of plaint is barred by Order 2 Rule 2 of the CPC (in short, CPC) and therefore, the proposed amendment cannot be allowed. It was alleged that relief of specific performance of the agreement regarding 28 kanals land was available to the plaintiff when the suit was filed and the same cannot be allowed by amendment of plaint.

4. Learned trial court vide impugned order allowed the amendment of plaint subject to payment of Rs. 500/- as costs. Feeling aggrieved, defendant No. 2 has filed this revision petition.

5. I have heard learned counsel for the parties and perused the case file.

6. Counsel for the petitioner reiterated that relief of specific performance of the agreement qua 28 kanals land out of the suit land was available to the plaintiff when he filed suit for injunction only and therefore, amendment of plaint to claim the said relief is barred by Order 2 Rule 2 CPC. Reliance in support of this contention has been placed on judgments in Tarsem Singh versus Sibu Ram, 1998 (1) PLR 574; Smt. Ralli versus Smt. Satinderjit Kaur, 1998(1) PLR 666; Veena Goyal and Anr. Versus Raj Kumar Mittal, 2008 (3) CCC 200 and Kamal Kishore Saboo versus Nawabzada Humayun Kamal Hassan Khan, 2001 (3) CCC 132. It was also argued that proposed amendment of plaint would change nature of the suit and therefore, could not be allowed. Reliance in support of this contention has been placed on judgment of Hon'ble Supreme Court in Shiv Gopal Sah @ Shiv Gopal Sahu veresus Sita Ram Saraugi and others, 2007(2) RCR (Civil) 679.

7. On the other hand, counsel for respondent/plaintiff pointed out that amendment of plaint was sought before the commencement of trial and even before framing of issues i.e. at initial stage of the suit and therefore, proposed amendment of plaint has been rightly allowed because law of amendment of pleadings is liberal. It was also argued that claim of the plaintiff for specific performance of the agreement is not barred by Order 2 Rule 2 CPC because amendment has been sought in the same suit and also because relief of specific performance of the entire agreement was not available to the plaintiff when he filed suit for injunction.

8. I have carefully considered the rival contentions. It is undisputed that amendment of plaint has been sought at initial stage of the suit before framing of issues and before commencement of trial. Law of amendment of pleadings is quite liberal. Amendment of pleadings is allowed liberally if the suit is at the initial stage. In the instant case, the amendment of plaint has, therefore, been rightly allowed by the trial court. However, amount of cost imposed by the trial court for permitting the amendment has to be enhanced keeping in view the value of the subject matter of the suit and also because amendment of plaint was not sought immediately after 30.8.2004, the last date stipulated in the agreement for execution of the sale deed, but was sought after long delay by moving application dated 4.1.2006.

9. As regards bar of Order 2 Rule 2 CPC, subsequent suit may be barred by the said provision but amendment of plaint in the existing suit is not barred by Order 2 Rule 2 CPC. All the four judgments cited by counsel for the petitioner in support of his contention regarding bar of Order 2 Rule 2 CPC pertained to subsequent suit and not to the first suit itself nor to amendment of plaint in the first suit. Consequently, the said judgments have no applicability to the instant case. Even otherwise, the plaintiff while filing suit for injunction was not entitled to claim the relief of specific performance of the entire agreement because date stipulated in the agreement for execution of sale deed for remaining 28 kanals 6 marlas had not lapsed when the suit was filed. Consequently, the plaintiff was not required to file suit for partial specific performance of the agreement. Moreover, the amendment being sought at the initial stage should not have been declined and has been rightly allowed. Judgment in the case of Shiv Kumar Sah (supra) has no applicability to the instant case because in that case, amendment was sought to include a time barred claim. However, it is not so in the instant case. For the reasons aforesaid, I find no infirmity much less perversity, illegality or jurisdictional error in the impugned order of the trial court so as to warrant interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India except to the extent of enhancing the amount of costs imposed by the trial court for allowing the amendment of plaint. Accordingly, the instant revision petition is dismissed except that the plaintiff shall pay Rs. 15,000/- as costs precedent for amendment of the plaint.