

(2012) 09 P&H CK 0276

High Court Of Punjab And Haryana At Chandigarh

Case No: Case No. : C.R. No. 7048 of 2011

Pritam Singh and Others

APPELLANT

Vs

Charan Singh and Others

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 6 Rule 17

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

Bench: Single Bench

Advocate: A.S. Narang, for the Appellant; Sanjay Gupta, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Plaintiffs, by filing this revision petition, have assailed order dated 22.09.2011 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Kharar, thereby dismissing application (Annexure P-3) moved by the plaintiffs for amendment of plaint (Annexure P-2). Plaintiffs filed suit on 27.11.2008 for permanent injunction alleging that respondents/defendants agreed to sell the suit property to the plaintiffs vide agreement dated 22.09.2008 and sale deed was to be executed up to 14.10.2008.

2. By amendment of plaint, the plaintiffs sought to seek the relief of specific performance of the agreement also, besides permanent injunction, by making necessary amendments in the plaint. The application was resisted by the defendants by filing reply (Annexure P-4). Trial court has dismissed the amendment application vide order (Annexure P-1), which is under challenge in this revision petition at the hands of the petitioners.

3. Counsel for the petitioners contended that amendment application was moved at initial stage of the suit, when even issues had not been framed, and therefore,

proposed amendment of the plaint should have been allowed. Counsel for the petitioners has relied on judgment of this Court in the case of Amrik Singh and another vs. Amitabh Singh and others reported as 2011 AIR CC 645.

4. Counsel for the respondents, on the other hand, contended that relief of specific performance of the agreement was available to the plaintiffs when the suit for injunction was filed initially, and therefore, the plaintiffs should have claimed the relief of specific performance in the original plaint and having not done so, they cannot be permitted to claim the said relief by amendment of plaint. Counsel for the respondents has referred to some observations made in unreported judgment dated 18.08.2010 passed in C.R. No. 726 of 2007 (O&M) titled Suresh Chaudhary vs. Rakesh Singhal and others.

5. I have carefully considered the rival contentions.

6. Counsel for the respondents is not controverting the factual contention raised by counsel for the petitioners that amendment application was moved at initial stage of the suit even before framing of issues. Amendment of pleadings after commencement of trial has been restricted by Order 6 Rule 17 of the CPC (in short - CPC). However, there is no restriction to allow amendment of pleadings before commencement of trial. Law of amendment of pleadings is quite liberal. In the instant case, the proposed amendment of plaint should have been allowed on payment of costs. The plaintiffs have to be burdened with costs because of delay in filing the amendment application. However, there is no ground to disallow the amendment of plaint. Relief of specific performance had not be come barred by limitation, when amendment application was filed. Accordingly, in the instant case, proposed amendment of plaint deserves to be allowed. This view finds support from the judgment of this Court in the case of Amrik Singh (supra). It may be mentioned that necessary averments to seek relief of specific performance of the agreement have already been made in the original plaint itself and only prayer for the relief of specific performance is mainly to be added along with formal amendment regarding valuation of the suit etc. Judgment in the case of Suresh Chaudhary (supra), cited by counsel for respondents, has no applicability to the instant case because the same pertains to the question of bar of subsequent second suit by Order 2 Rule 2 CPC. Some observations have been made regarding amendment of plaint in the previous suit in that case. However, judgment dated 18.08.2010 in the case of Suresh Chaudhary (supra) does not relate to amendment of plaint. For the reasons aforesaid, I find that impugned order of the trial court suffers from illegality and jurisdictional error. Accordingly, the instant revision petition is allowed. Impugned order (Annexure P-1) passed by the trial court is set aside. Application for amendment of plaint moved by the plaintiffs (Annexure P-3) is allowed, subject to payment of Rs. 15,000/- as costs precedent.