

(2013) 08 P&H CK 0864

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4824 of 2012

Nawal Kishore

APPELLANT

Vs

Jatinder and Others

RESPONDENT

Date of Decision: Aug. 12, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227

Citation: (2013) 4 PLR 833

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Jai Vir Yadav, for the Appellant; R.A. Sheoran, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Paramjeet Singh, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for quashing the order dated 24.07.2012 (Annexure P/3) passed by the learned Civil Judge (Junior Division), Charkhi Dadri, whereby application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint, has been dismissed. Brief facts of the case are that petitioner/plaintiff and the proforma respondents filed a suit for declaration against the defendants to the effect that the plaintiffs are owner in possession of land as detailed in the head note of the suit. After notice, the contesting respondent-defendants filed written statement. In para no. 2 of the written statement, it was revealed that the defendants have sold some portion of the suit land vide sale deed no. 4814 dated 08.03.2010 to Smt. Sunita Devi, Kavita Devi and Parmila Devi. The plaintiffs immediately after filing the written statement, filed an application under Order 6 Rule 17 read with Section 151 CPC seeking amendment in the suit. The same has been dismissed by the trial Court vide order dated 24.07.2012 (Annexure P/3). Hence, this revision petition.

2. I have heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner vehemently contended that the Court has taken hyper-technical approach despite the fact that everything has been pleaded in the application for amendment. In the application, it is also pleaded that in the plaint the vendees Sunita Devi, Kavita Devi and Parmila Devi are required to be impleaded as defendant nos. 5 to 7. Learned counsel for the petitioner further contended that in the application specific prayer and specific parawise amendments sought to be carried have been mentioned where-ever necessary.

4. Learned counsel for the respondents has opposed the contention raised by the learned counsel for the petitioner and contended that application under Order 6 Rule 17 CPC has not been decided, rather a direction has been issued to file an application under Order 1 Rule 10 CPC for impleading the parties. In this manner, the petitioner should move an appropriate application in accordance with law as suggested by the trial Court.

5. I have considered the rival contentions of the learned counsel for the parties and perused the record.

6. Paragraph Nos. 4 to 5 of the amendment application (Annexure P/1) read as under:-

4. In order to avoid further litigation and also to avoid complication in the present case titled of the suit prayer and the suit is required to be amended to challenge the sale deed no. 4814 dated 8.3.2010 and also to implead vendees and to restrain the defendants from taking the amount of compensation from the government and as such the amendment has become necessary. The amendment which is sought to be made is as under:-

i. That in the plaint vendees Sunit Devi, Kavita Devi and Parmila Devi be made as defendants No. 5 to 7 and title of the suit and in the head note and prayer made in the suit in the end the words "and sale deed no. 4814 dated 8.3.2010 is wrong and against the law and is null and void and is not binding of the rights of the plaintiff and is liable to be set aside and on the basis of this sale deed defendants no. 5 to 7 have got no rights of ownership and suit for permanent injunction be issued to defendants no. 1 to 4 not to take the compensation from the Haryana Government in respect of the suit land and in case possession is not proved, possession may be got delivered.

ii. That the plaintiff wants to add following paragraph in the plaint:

7A. That the sale deed no. 4814 dated 8.3.2010 executed by defendants no. 1 to 4 in favour of defendants no. 5 to 7, is wrong, illegal and null and void. It is not binding on the rights of the plaintiff and is liable to be set aside and the sale deed does not confirm any rights of ownership in favour of defendants no. 5 to 7. Because defendants no. 1 to 4 were neither the owners nor in possession of the land under

sale. Attested copy of the sale deed is attached.

7B. That defendants no. 5 to 7 have no possession of the suit land nor defendants no. 1 to 4 remained ever in possession of the same. Defendants have been threatening to take possession. If the defendants succeed in getting possession of the suit land during the pendency of the case and the plaintiffs are unable to prove their possession of the suit land, then plaintiffs are entitled to seek possession.

4. That in the end of para no. 9 following amendment is sought to be made:

And cause of action against defendants no. 5 to 7 has arisen from the written statement dated 8.11.2011.

5. That in the end of para no. 11 also following amendment is sought:

That the court fee regarding compensation and possession would be paid as and when necessity arises and as per the orders passed by this Hon"ble Court.

5. Perusal of the amendment application as well as the impugned order reveals that the trial Court has taken a hyper-technical approach. It is pertinent to mention here that in the trial Court some times pleadings are not properly drafted and merely on technicalities the relief should not be declined. It is otherwise not necessary that particular section should be mentioned in the application. It is the substance in the application which is material for adjudicating upon the relief claimed.

6. So far as the provisions of Order 1 Rule 10 CPC are concerned, the Court has suo motu power to add and struck off the defendants where-ever it feels necessary, keeping in view the pleadings and the documents brought before the Court. Admittedly suit was at the initial stage. It is pertinent to mention that it came to the notice of the petitioner-plaintiff from the written statement that defendant had taken objection in the written statement that land has already been sold vide sale deed No. 4814 dated 08.03.2010. Immediately thereafter, the petitioner moved an application for amendment of the plaint.

7. In view of the above, this Court is of the view that the impugned order is required to be modified and the application for amendment as well as impleading the vendees who have purchased the land in pursuance of sale deed dated 08.03.2010 which has already been mentioned in para no. 4(i) of the application for amendment, is required to be allowed subject, however, to costs of Rs. 1,000/- to be paid to the respondents herein. Ordered accordingly. In view of the above, present petition is disposed of.