

(2016) 09 P&H CK 0092

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 5659 of 2016

Nirmal Kanta @ Nirmal

APPELLANT

Vs

Kishan Rai Kaura

RESPONDENT

Date of Decision: Sept. 30, 2016

Acts Referred:

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

Citation: (2017) 2 PLR 15

Hon'ble Judges: Mr. Amit Rawal, J.

Bench: Single Bench

Advocate: Mr. Rahul Rampal, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

Amit Rawal, J.(Oral) - The petitioner-plaintiff is aggrieved of the impugned order dated 20.05.2016, whereby the application under Order 6, Rule 17 CPC, purported to have been disposed of without assigning any reasons. 2. Mr. Rahul Rampal, learned counsel appearing on behalf of petitioner-plaintiff submits that petitioner-plaintiff had instituted the suit for declaration to the effect that the plaintiff along with defendants are joint owner in possession to the extent of 1/4th share of property as described in head note of the plaint with further declaration to the effect that the subsequent mutation of transfer of the property in the name of the defendants was required to be set aside with consequential relief of permanent injunction. Suit aforementioned was filed on 19.09.2013. However, during the pendency of the suit, application seeking amendment of the plaint was moved when previous joint written statement on behalf of defendants was filed and amendment sought to be incorporated is as under:-

"i) a) In the head note of the plaint after the word "HB No.91 Tehsil Raikot, Distt. Ludhiana" and before the word "and" the plaintiff wants to insert the following words by way of amendment:-

"The present property in dispute is joint Hindu family/coparcenaries property, which was earlier inherited by the deceased Blawant Rai Kaur from his fore father, as such the said late Sh. Balwant Rai Kaura was holding the present property in dispute as a Karta of Joint Hindu Family and was having not any exclusive right and title over the present suit property and the plaintiff along with the other co-sharer/members of Joint Hindu Family, have acquired right and title over the suit property by birth, being coparcener/the member of joint Hindu family"

b) That in the Ist para of the plaint, after the word who was having ownership out of the above said khasra numbers and before the words Sh. Balwant Rai Kaura, the following words is to be inserted:-

"the said ownership of Late Sh. Balwant Rai Kaura was recorded in the revenue record being the karta of the joint Hindu Family, as the property in hands of late Sh. Balwant Rai Kaura, i.e. the suit property is the Joint Hindu Family/Coparcenaries property and the plaintiff as well as the other defendants are having equal share in the present property by birth, being coparcener/the member of joint Hindu Family" and the said Balwant Rai Kaur was not having any exclusive right/title over the said property in dispute.

C) Accordingly in prayer clause of the plaint after the word "HB No.91, Tehsil Raikot, Distt. Ludhiana" and before the word "and" the plaintiff wants to insert the following words by way of amendment:-

" The present property in dispute is joint Hindu family/coparcenary property, which was earlier inherited by the deceased Blawant Rai Kaur from his fore father, as such the said late Sh. Balwant Rai Kaura was holding the present property in dispute as a Karta of Joint Hindu Family and was having not any exclusive right and title over the present suit property and the plaintiff along with the other co-sharer have acquired right and title over the suit property by birth, being coparcener/the member of joint Hindu family".

ii) a) In the head note of the plaint after the word "Further declaration to the effect that" and before the word "the subsequent mutation of transfer" the plaintiff wants to insert the following words by way of amendment-

"The deceased Balwant Rai Kaura as well as Late Smt. Leela Devi had never executed any will during their life times and the alleged will, alleged to be executed by Late Sh. Balwant Rai Kaur and Late Smt. Leela Devi are forged and fabricated documents, even other wise, the present property in dispute is joint/Hindu family coparcenaries property and both of them were not competent to bequeath the entire property in dispute in the name of defendants by way of will, by ignoring the right of other coparceners"

b) That in the 6th para of the plaint, after the word "Leela Devi on 27.10.1989" and before the "para No.7", the following words is to be inserted:-

"The deceased Balwant Rai Kaura as well as Late Smt. Leela Devi had never executed any will during their life times and the alleged will, alleged to be executed by Late Sh. Balwant Rai Kaur and Late Smt. Leela Devi are forged and fabricated documents, even other wise, the present property in dispute is joint/Hindu family coparcenaries property and both of them were not competent to bequeath the entire property in dispute in the name of defendants by way of will, by ignoring the right of other coparceners"

c) Accordingly in prayer clause of the plaint after the word "further declaration to the effect that" and before the word "the subsequent mutation of transfer" the plaintiff wants to insert the following words by way of amendment:-

"The deceased Balwant Rai Kaura as well as Late Smt. Leela Devi had never executed any will during their life times and the alleged will, alleged to be executed by Late Sh. Balwant Rai Kaur and Late Smt. Leela Devi are forged and fabricated documents, even other wise, the present property in dispute is joint/Hindu family coparcenaries property and both of them were not competent to bequeath the entire property in dispute in the name of defendants by way of will, by ignoring the right of other coparceners."

3. He submits that other side did not file any reply and the manner and mode in which the application purported to have been disposed of. No head and tail is made out. 4. I have heard learned counsel for the petitioner-plaintiff and appraised the paper book. 5. The order under challenge reads thus:-

"Present:- Sh. Dinesh Katyal, Advocate for the plaintiff.

Sh. Iqbal Singh, Advocate for defendants no.1A, 1B and 2.

Defendant No.3 ex parte

This order of mine will disposed of an application under Order 6, Rule 17 CPC for amendment of the plaint.

Through this application plaintiff wants to incorporate that the suit property is joint Hindu family JD ex parte. Today, the application moved by the JD has been dismissed in default and as such, the application moved for staying of proceedings under Order 21, Rule 66 CPC is hereby dismissed.

From pleadings of the parties issues are framed as follows:-

1. Whether plaintiff is entitled to relief for declaration as prayed for? OPP
2. Whether plaintiff is entitled to relief for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Relief."

There is no such other issue arise or press with. Learned counsel for the plaintiff is directed to file the list of witnesses along-with PF/DM within 15 days, failing which no assistance of the court will be granted for summoning of the witnesses. Now to come upon 21.10.2016 for evidence of the plaintiff at own responsibility.

Sd/-

(Pradeep Synghal)/ACJ(SD)/Jgn/20.05.2016" 6. It is strange that Judge of Senior Division rank is passing the order on application moved under Order 6, Rule 17 CPC in the manner and mode as indicated above, who is required to pass the detailed order either declining or allowing the application, much less, containing averments and all other attenuating circumstances. There has to be adherence to the Code of Civil Procedure, much less, the High Court Rules and Orders regarding passing of the order on the miscellaneous application. Once the order does not indicate any reasons, I am of the view that there is no order disposing off application under Order 6, Rule 17 CPC yet in the same breath, Court below had framed the issues. First two lines of the order disposing of the application without any indication qua fate, is hereby set aside. 7. Matter is remitted back to the trial Court to decide the application in accordance with law. However, the District Judge, Jagraon, Ludhiana is directed to seek the comments of the concerned Judge i.e. Pradeep Synghal, ACJ, Senior Division, Jagraon, regarding the manner of passing of the order. Comments be remitted to this Court within a period of two weeks from the date of receipt of certified copy of this order. 8. Registry is directed to place the comments along with copy of the revision petition on their receipt. 9. Accordingly, revision petition is allowed. .