

Avtar Singh Vs. Faqir Singh

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Court : Punjab and Haryana

Decided On : May-10-2005

Reported in : (2005)140PLR685

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17; [Constitution of India](#) - Article 227

Appeal No. : C.R. No. 2365 of 2005

Appellant : Avtar Singh

Respondent : Faqir Singh

Advocate for Pet/Ap. : V.G. Dogra, Adv.

Judgement :

M.M. Kumar, J.

1. The order of the trial court dated 29.3.2005 has been challenged by the defendant-petitioners vide which an application of the plaintiff-respondent for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 has been allowed. The plaintiff-respondent has filed suit in the year 1992 for declaration to the effect that he is owner in possession of the suit land and the defendant-petitioners have no concern with it. The sale deed dated 7.2.1992

allegedly executed by defendant-petitioner No. 1 in favour of defendant-petitioner Nos. 2 to 4 and another has also been challenged. A further prayer has been made for permanent injunction restraining the defendant-petitioners and another from alienating the suit land in any manner and dispossessing the plaintiff-respondent forcibly from the same. When the evidence of the parties was completed and the case was posted for arguments an application under Order VI Rule 17 of the Code was filed which sought to explain as to how the excess land has been shown in the revenue record in the name of Pal Singh predecessor-in-interest of defendant-respondent No. 1 who has sold the same to defendant-petitioner Nos. 2 to 4 and another. The case of the plaintiff-respondent is that defendant-petitioners was not owner of the property in dispute and he had no right to execute the sale deed in favour of defendant-petitioner Nos. 2 to 4 and another because it has been alleged by way of amendment that the predecessor-in-interest of defendant-petitioner No. 1 Pal Singh was owner to the extent of 95 Kanals 9 Maras only whereas he had been shown to be owner in respect of 139 Kanals 6 marlas in the revenue record. Therefore, 44 Kanals excess land has been shown in his name. The trial court has permitted the amendment on the ground that it would not change the nature of the suit which was to elucidate the pleadings already made by the plaintiff-respondent. Moreover, it has been recorded that plaintiff-respondent was not to adduce any evidence for amendment and as such it would not lead to do-novo trial. The observations of the trial Court in this regard read as under:

'... amendment, if necessary for proper adjudication of the controversy at hand can be allowed at any stage of the proceedings and judgments cited by Id. counsel for the defendant is not applicable to the facts and circumstances of the instant case. Moreover, amendment sought for will not change the nature of the case, rather, it will elucidate the pleadings already made by the plaintiff. Not only this, applicant/plaintiff has specifically pleaded in his amendment application that he will not lead any evidence after amendment of the plaint and as such it will not lead to any denovo trial. So far as question of filing the amendment application at belated stage is concerned, the same can otherwise be compensated with cost. Even, otherwise from the proposed amendment pleadings now new issue arises and trial of this case will not be prolonged.'

2. After hearing the learned counsel and perusing the impugned order I am of the considered view that no interference of this Court in exercise of jurisdiction under Article 227 of the Constitution is called for. The plaintiff-respondent has been permitted to explain in detail as to how the predecessor in interest of defendant No. 1 were shown to be owner of excess land in the revenue record whereas he was not the owner to that extent. A perusal of the application for amendment dated 21.2.2005 (Annexure P.3) would show further details. All these facts are sought to be proved on the basis of the record. The defendant-petitioner has to be granted an opportunity to file the amended written statement. Only thereafter it would be determined whether any issue would rise necessitating further trial. To that extent the order of the trial Court would be deemed to be modified because it cannot be concluded at this stage whether an issue would arise or not because no written statement to the amended plaint by the defendant-petitioners have been filed so far.

With the above modification in the impugned order, the petition stands disposed of.