

Ujjagar Singh and ors. Vs. Mann Singh and ors.

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Court : Punjab and Haryana

Decided On : Jul-02-2003

Reported in : (2003)135PLR498

Judge : Viney Mittal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 6, Rule 17

Appeal No. : Civil Revision No. 1184 of 1995

Appellant : Ujjagar Singh and ors.

Respondent : Mann Singh and ors.

Advocate for Pet/Ap. : Rakesh Gupta, Adv.

Disposition : Petition allowed

Judgement :

Viney Mittai, J.

1. In view of the law laid down in the case of Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Development and Ors., J.T, 2003(4) S.C. 255 the revision petition filed by the petitioner under Section 115 CPC is not maintainable.

2. However, Sh. Rakesh Gupta, the learned counsel for the petitioners submits that since the order had been passed by the learned trial court on May 10, 1995

and the present petition is also pending in this Court since the year 1995, therefore, in the interest of justice, the present revision petition may be treated as petition under Article 227 of the Constitution of India.

3. Keeping in view the facts and circumstances of this case and also the prayer made by the learned counsel for the petitioners, the present petition is treated to be a petition under Article 227 of the Constitution of India.

4. A suit for declaration was filed by the plaintiff-respondents No. 1 to 3. They claimed that they are owners in possession of 1/2 share of the land and that being mortgagees with possession since June 30, 1957 they have become the owners in fact by efflux of time. They have also challenged the order dated July 26, 1960 passed by the Special Collector, Punjab, Chandigarh and order dated May 16, 1980 passed by the Sub Divisional Officer (Civil), Dabwali-cum-allotment authority/ prescribed authority as null and void.

5. None has chosen to appear on behalf of the plaintiffs in spite of service.

6. The present petitioners are defendants No. 3, 4 and 18 in the aforesaid suit.

7. Land of one Surijan Singh was declared surplus in the year 1960. An appeal by him was dismissed by the appellate authority vide order dated March 24, 1965. In the year 1980, the said land was allotted to the defendant-petitioners for utilisation. When the suit was filed by the said plaintiff-respondents then during the course of proceedings of the suit; when it was fixed for arguments, then the present petitioners filed an application under Order 6 Rule 17 of the Code of Civil Procedure for seeking an amendment of the written statement filed by them. By way of amendment, the defendants sought to include a plea that the aforesaid Surjan Singh who was the big land owner was the real uncle of the plaintiffs and that the revenue record showing the aforesaid plaintiffs as mortgagees was fake entry and the same had been carried out in the revenue record just to avoid the declaration of surplus area and the aforesaid transaction was without any consideration. The said prayer made by the defendants was declined by the learned trial Court vide order dated February 25, 1995. The said order passed by the learned trial Court has been impugned in the present revision petition,

8. I have heard Sh. Rakesh Gupta, the learned counsel for the petitioners and with his assistance have also gone through the record of the case.

9. Shri Gupta has submitted that in fact the plea raised by the defendants-petitioners was merely with a view to support the order of the declaration of the surplus area and also the allotment in favour of the defendants. Sh. Gupta has further submitted that in fact the plea raised by them was only to show that the plaintiffs who had challenged the order of declaration of surplus area in the year 1960, are the real nephews of the big land owner and, therefore, entire approach of the learned trial Court in passing the aforesaid impugned order was erroneous and the learned trial Court had in fact refused to exercise the jurisdiction vested in it by law by passing the impugned order.

10. Sh. Gupta has specifically submitted that the amendment sought by the defendants in the written statement may be confined as follows:

'That Surjan Singh who was big land owner was the real uncle of the plaintiffs Mann Singh etc. and, revenue record showing the Mann Singh etc. as mortgagee is a fake entry and the same was carried out in the revenue record just to save themselves intentionally, this entry is without any consideration and without delivery of possession. The said was incorporated in the record only to get illegal benefit from the surplus authorities.'

11. I have given my thoughtful consideration to the entire matter.

12. From the perusal of the record, I find that the defendants are not taking any such pleas which would change the defence taken by them earlier in the written statement. They are in fact supporting the order of the declaration of surplus area passed in the year 1960 by the competent authority and order of the allotment passed in the year 1980. For such a defence, 11 such pleas available to them could have been taken by them. Mere delay in filing the application for amendment cannot be taken against the defendants to decline their prayer.

13. Accordingly, the prayer made by the defendants, as limited by the learned counsel in the reproduced portion above, is allowed and the defendants are

permitted to amend the written statement to the limited extent. On the amendment of the written statement, the defendants would be only granted one opportunity to lead their entire evidence in support of the amended plea.

14. It is made clear that no other opportunity to lead further evidence would be granted to the defendants. After the evidence of the defendants has been concluded on that limited question, the plaintiffs would be at liberty to lead evidence in rebuttal. For that purpose, the plaintiffs would also be granted one opportunity.

Accordingly, the present petition is allowed subject to payment of Rs. 5000/- as costs. The costs shall be a condition precedent for permitting the petitioners to amend the written statement, as aforesaid.

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