

(2012) 01 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 183 of 2012

Jagjit Singh and others

APPELLANT

Vs

Balwinder Singh @ Salwinder Singh and others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 01 P&H CK 0101

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendants No. 2, 3 and 6 have filed the instant revision petition under Article 227 of the Constitution of India to challenge order dated 8.12.2011, Annexure P/9 passed by learned Additional Civil Judge (Senior Division), Talwandi Sabo, thereby allowing application Annexure P/7 moved by respondent no. 1 ? plaintiff for amendment of plaint.

2. Plaintiff vide plaint Annexure P/1 filed suit alleging that he and defendants no. 1 to 5 are co-sharers in the suit land measuring 132 kanals 13 marlas and are cultivating their share of the land at the spot. The land has not yet been partitioned. The plaintiff alleged that he has right to use the passage existing in the suit land for entering the land of his share which he is cultivating at the spot. The plaintiff sought permanent injunction restraining defendants no. 1 to 5 from interrupting the plaintiff's right of passage and from alienating land in excess of their share and from alienating specific khasra numbers of the joint land without partition.

3. By way of amendment, the plaintiff sought to plead that he is in possession of khasra nos. 150/1 and 167/2 as his share out of the suit land and there is joint passage through khasra nos. 152/1, 151/1/1 and 151/1 existing at the spot. The said amendment has been allowed by the trial court vide impugned order

Annexure P/9 which is under challenge in this petition.

4. I have heard learned counsel for the petitioners and perused the case file.

5. Counsel for the petitioners contends that plaintiff earlier moved application dated 18.11.2011, Annexure P/3 for appointment of Local Commissioner to report about existence of the disputed passage but withdrew the said application on 22.11.2011 and filed another application Annexure P/5 on the same day for appointment of Local Commissioner alleging the existence of passage through aforesaid khasra numbers and demolition thereof by the defendants on 19.11.2011. Appointment of Local Commissioner was sought to report about the destruction of the said passage. Thereafter the plaintiff moved application Annexure P/7 dated 25.11.2011 for amendment of plaint. It was thus contended that the plaintiff in the plaint did not disclose the location of the alleged passage and did not disclose the same even in application Annexure P/3 but it was disclosed for the first time in application Annexure P/5 and thereafter amendment application Annexure P/7 was moved.

6. I have carefully considered the aforesaid contention but the proposed amendment could not have been disallowed on this ground. Admittedly, suit is at preliminary stage and even issues have not yet been framed. Without proposed amendment of plaint, the plaint would be vague because it does not specify the land claimed by the plaintiff in his possession as co-sharer nor location of the alleged disputed passage has been specified in the original plaint. To specify the same and to clarify the plaintiff's claim, the plaintiff sought proposed amendment which has been allowed by the trial court subject to payment of Rs. 300/- as costs. The suit being at preliminary stage, the proposed amendment has been rightly allowed by the trial court. The proposed amendment is necessary for proper and effective adjudication of the suit.

7. For the reasons aforesaid, I find no perversity, illegality or jurisdictional error in the impugned order of the trial court so as to warrant interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is meritless and is accordingly dismissed in limine.