

(1993) 07 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3404 of 1992

Pala Ram

APPELLANT

Vs

Naurang Singh and Nauranga

RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

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

Citation : (1993) 105 PLR 607

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : S.S. Dinarpur, for the Appellant; Sardara Singh, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Dismissal of an application by the petitioner Pala Ram for amendment of the written statement by the first appellate Court is what has given rise to the present revision petition.

2. Naurang Singh, respondent herein filed a suit for possession by preemption against Pala Ram petitioner in respect of land measuring 1 Kanal 5 Marlas as fully detailed in the plaint. Suit was decreed by the trial Court by judgment and decree dated May, 4, 1991. It may be noticed at this stage that Pala Ram, defendant-vendee did not take any objection in the written statement to the effect that the suit was bad for partial pre-emption. Aggrieved by the judgment and decree, Pala Ram defendant preferred appeal which is now pending before the learned Additional District Judge.

3. During the pendency of the appeal, Pala Ram filed an application for amendment of the written statement so as to permit him to allege that the suit is bad for partial pre-emption and the impugned sale was not pre-emptible as he was a tenant on the land in suit. The application was opposed. Learned Additional District Judge by order dated October 19, 1992 dismissed the said application. Hence, this revision at the instance of Pala Ram, defendant.

4. Before me, learned counsel for the petitioner did not press the prayer of the petitioner for amendment of the written statement in respect of the ground of his being a tenant on the land in suit. He, however, submitted that defendant Pala Ram had purchased land measuring 1 Kanal 11 Marlas for Rs.12,500/- vide registered sale deed dated February 20, 1987, being 1/4th share of land measuring 6 Kanals 3 Marlas comprised in Khewat No. 8 min. Khatouni No. 19 min, Khasra Nos. 11/19/3 (1-12), 20/3, (1-5), 21/2/2 (3-6) and that Naurang Singh plaintiff had filed a suit for possession by way of pre-emption in respect of 1 Kanal 5 Marlas only. He further submitted that though the defendant was in possession of the registered sale deed yet this fact came to his knowledge only during the pendency of the appeal, the same having not been produced before the trial Court. He thus submits that the genuineness of the sale deed cannot be doubted as it cannot be manufactured and it being per se admissible, the petitioner ought to have been permitted to amend the written statement, especially when, the law relating to amendment of the written statement is very liberal and that the right of pre-emption is a piratical right which can be defeated by all legitimate means.

5. Learned counsel for the respondent, however, contended that the lower appellate Court rightly declined the request of the petitioner for amendment of written statement and that allowing the prayer for amendment of written statement, would amount to de novo trial. It was also submitted that in the original written statement, the petitioner had not taken the plea about the suit being bad for partial pre-emption and that the sale related to 1 Kanal 11 Marias of land. He further submitted that it was specifically mentioned in the plaint that the land in suit was 1 Kanal 5 Marias and it was so mentioned in the copy of the sale deed as well which he obtained from the office of the Sub Registrar.

6. After hearing the learned counsel for the parties, I am of the view that this revision deserves to succeed. Original sale deed has been produced before me wherein it is clearly recorded that the land which is the subject matter of the sale deed is 1 Kanal 11 Marias. Even otherwise, it is also recorded therein that the sale related to 1/4th share of land measuring 6 Kanal 3 Marias which again comes to 1 Kanal 11 Marias. It is not understood as to how and under what circumstances it is recorded as 1 Kanal 5 Marias in the certified copy of the sale deed though even in the certified copy of the sale deed it is recorded that the subject matter of the sale is 1/4th share of 6 Kanal 3 Marias of land. Land sold is not of any specific Khasra No. but is a share in the total land. True, that the defendant did not take any objection that the suit was bad for partial pre-emption while filing the written statement during the pendency of the appeal, yet in the circumstances of this case, amendment in my view deserves to be allowed. Present is a suit for possession by pre-emption which right is though a statutory right, but has always been termed as a very weak right and it can be defeated by all legitimate means. If the plaintiff had been little careful, he could have immediately made out that the subject matter of the sale was land measuring 1 Kanal 11 Marias and not 1 Kanal 5 Marias, it being clearly mentioned even in the

certified copy of the sale deed that the subject matter of sale is 1/4th share of land measuring 6 Kanal 3 Marlas. There can be a genuine mistake on the part of the defendant to raise an objection about partial pre-emption as he seems to have been misled by the certified copy of the sale deed on which reliance was placed by the plaintiff and the defendant failed to take objection about partial pre-emption after going through the original sale deed. The defendant, is, of course a little negligent in not taking objection at the appropriate stage but he cannot be shut out to raise the objection of the type when the land sold is clearly 1 Kanal 11 Marlas and is so recorded in the original sale deed. In this situation, the order passed by the learned Additional District Judge refusing permission to amend the written statement is set aside. Application for amendment of the written statement is allowed subject to payment of Rs. 300/- as costs. The revision petition is thus, allowed accordingly. The appellate Court now shall accept the amended written statement from the petitioner and decide the matter in accordance with law.