
(2000) 07 P&H CK 0190
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 13 of 1998

Pritpal Singh

APPELLANT

Vs

Amar Kaur etc.

RESPONDENT

Date of Decision : 26-07-2000

Acts Referred:

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

Citation : (2000) 07 P&H CK 0190

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : P.K. Gupta, for the Appellant; D.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—One Pritpal Singh filed suit for the grant of permanent injunction against late Amar Chand son of Manju represented by his wife and children restraining them from taking forcible possession of land measuring 35 Kanals 7 Marlas and in the alternative for possession. It is alleged in the plaint that civil suit No.218 of 13.6.80 was filed by Wattan Singh, who was co-sharer qua land bearing Khasra Nos.2282 and 2281 against Amar Chand. In that suit, Hans Raj, retired Kanungo was appointed as local commissioner, who at the time of demarcation found some of the southern portion of Khasra No.2282 belonging to Wattan Singh in possession of defendant Amar Chand and some of the northern side of Khasra No.2281 belonging to Amar Chand in possession of Wattan Singh. In that suit, parties entered into compromise. As a sequel to that compromise, some of the southern portion of Khasra No.2282 was given to Amar Chand and in lieu thereof some northern portion of Khasra No.2282 belonging to Amar Chand was given to Wattan Singh and thus parties to the said suit gave up their respective portions in favour of each other. In the present suit, it is alleged that land measuring 35 K 7 M minus the land, which was the subject matter of the compromise in suit No.218 ibid, is owned and possessed by the LRs of Wattan Singh. It may be mentioned here that Pritpal Singh is one of LRs/heirs of

Wattan Singh. In the previous suit No.218 decided on 9.6.81 title Wattan Singh vs. Amar Chand etc. it was decided that they will retain the land of their respective possession found by local commissioner at the spot. It is alleged in the plaint that heirs of Amar Chand do not have any right, title or interest in the land measuring 35 K 7 M minus the land which was the subject matter of that compromise. Heirs of Amar Chand are owners of land adjoining to the land of Wattan Singh i.e. has heirs namely Pritpal Singh etc. In the written statement, the heirs of Amar Chand denied that compromise and stated that they are in possession of the property which had allegedly been given to Wattan Singh in the wake of that alleged compromise.

2. Plaintiff Pritpal Singh moved application under Order 6 Rule 17 CPC whereby he wanted to amend the plaint. By way of amendment, he wanted to plead that Wattan Singh Predecessor in interest of Pritpal Singh and others filed suit No.218 of 13.6.80 against Amar Chand etc. In the said suit, Hans Raj, was appointed as local Commissioner, who gave demarcation of the land belonging to the parties. As per his report, some of the southern portion of Khasra No.2282 belonging to Wattan Singh was in possession of Amar Chand and some of the northern portion of Khasra No.2281 belonging the Amar

Chand was in possession of Wattan Singh. In the said suit, parties abandoned the said land in favour of each other. In the said suit, parties retained their respective possessions and abandoned their claim on the basis of the land of their respective ownership. It is further stated that the plaintiff should be permitted to delete whatever becomes redundant in view of this amendment. This application was opposed by the heirs of Amar Chand defendant. It was pleaded that if the parties had abandoned their land, decree would have been passed in respect of the abandoned land and mutation would have been sanctioned. By way of amendment, plaintiff wants to change the entire complexion of the suit. Plaintiff wants to withdraw his admission by way of amendment, plaintiff filed application for amendment of plaint earlier also. Suit was instituted in the year 1988 and this application for amendment was filed in the year 1997. Plaintiff is not in possession of the land purchased by the defendants.

3. This application for amendment was refused by the learned trial court with the observation that amendment cannot be allowed the effect of which is the withdrawal of admission and further no amendment can be allowed with is inconsistent with the case set up earlier, Learned counsel for the petitioner submits that amendment normally cannot be allowed if its effect is the withdrawal of the admission made earlier or its effect is the taken away from party a legal right which has accrued to him by lapse of time. In this case, he submits that the necessity for amending the plaint has arisen because of the stand taken by the defendants in their written statement. He further submits that defendants in their written statement, had taken a complete somersault so far as the compromise which had taken place in civil suit No.218 of 1980 is concerned.

He submits that if they had admitted that compromise to have taken place, there would have been no necessity of amending the plaint. He further submits that facts sought to be pleaded by amending the plaint are apparent on the face of the record of civil suit No.218 of 13.6.80. The further submits that in that suit, compromise was taken into account for the decision given and the decision of that suit will have bearing on this suit particularly in view of the denial of that compromise by the heirs of Amar Chand defendant. He further submits that delay by itself cannot defeat the plaintiffs right to amend the plaint because if the plaintiff has sought amendment of plaint belated defendant can be compensated for by costs.

4. In my opinion, the proposed amendment should have been allowed. Law to amendment of pleadings is quite liberal. Rules of procedure are mere hand-maids of justice. Amendment of pleadings can be refused only when the effect of amendment is to withdraw some admission made earlier and to take a complete somersault on the case pleaded earlier or when some right has become accrued to the other party because of lapse of time. Revision is, therefore, allowed and the proposed amendment is allowed on payment of Rs.2,000/- as costs. Defendants are free to take any plea which becomes available to them in the wake of the amendment plaint and they may put in fresh written statement to the amendment plaint.