Before Mohinder Singh Sullar, J.

R.P.S. ASSOCIATES,—*Petitioner*

versus

OM PARKASH @ HARI SINGH & OTHERS,—*Respondents*

C.R. No. 5845 of 2011

23rd September, 2011

Constitution of India - Art. 227 - Code of Civil Procedure, 1908 - O.6 Rl.17 - Punjab Land Revenue Act, 1887 - Ss.119,120,121,122 & 123- Plaintiff filed suit on 3.3.2006 for declaration that mutation in pursuance of sale deed is void - Issues framed on 18.7.2006 - Defendant filed application under order 6 Rule 17 CPC on 11.3.2011 for amending written statement - Application dismissed - Order challenged by way of revision - Held - No cogent explanation is forthcoming to explain delay - Amendment cannot be allowed.

Held, that it is not a matter of dispute that the petitioner has filed the application (Annexure P5) on 11.3.2011 for amendment of his written statement i.e. after about 4¾ years, after the issuance of the licence. No cogent explanation is forth coming on record, as to why the application for amendment of the written statement was not filed before the commencement of trial, which was only filed after about 4½ years, after the commencement of trial/framing of issues. Proviso to Order 6 Rule 17 CPC posits that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. As such, no explanation in this respect is forthcoming on record. Therefore, the application for amendment of written statement cannot legally be allowed.

(Para 18)

Further held, that Trial Court order containing the valid conclusions cannot legally be set aside, in exercise of limited revisional jurisdiction of this Court as contemplated under Article 227 of the Constitution of India, unless the same is perverse and without jurisdiction.

(Para 20)

Sanjiv Bansal, Advocate, *for the petitioner.*

MEHINDER SINGH SULLAR, J. (ORAL)

(1) Tersenessly, the facts, which need a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant revision petition and emanating from the record are, that Om Parkash alias Hari Singh son of Balu Singh and others respondent Nos.1 to 4-plaintiffs (for brevity "the plaintiffs") filed the suit (Annexure P1) for a decree of declaration to the effect that the mutation bearing No.6494 dated 8.10.2005, in pursuance of the sale deed dated 19.9.2005, is null and void abinitio, with a consequential relief of permanent/prohibitory injunction, restraining M/s R.P.S.Associates Ltd. petitionerdefendant No.1 and others proforma respondents No.5 to 10-defendants No.2 to 7 (for short "the defendants"), from changing the nature of the suit land from **agriculture to urban land or raising any construction over it** till the time it is duly partitioned by metes and bounds between the parties and from taking possession of any specific portion/ khasra number, on the basis of indicated illegal mutation.

(2) The case set up by the plaintiffs, in brief in so far as relevant, was that they are co-owners/co-sharers in possession of the land in dispute. It was claimed that defendant Nos.2 to 7 have sold their respective shares, out of the joint land in litigation, without partition, to petitioner-defendant No.1, by virtue of sale deed dated 19.9.2005. The Khasra number and dimensions of the disputed land were stated to have been wrongly described in the sale deed and an illegal mutation has been entered, in pursuance thereof, which were claimed to be null and void. It was alleged that in the garb of said wrong mutation, defendant No.1 intends to possess the front land, which is more fertilized, having more potential and value, without any legal right, in order to defeat the rights of the plaintiffs-cosharers in the suit land.

(3) Levelling a variety of allegations and narrating the sequence of events, in all, according to the plaintiffs that the land in dispute is a joint property of all the co-owners and they are in its joint possession. Defendant Nos.2 to 7 have sold their respective shares to defendant No.1, without any partition and it (defendant No.1) illegally got entered/sanctioned the mutation and Tatima, in respect of specific khasra numbers, without any legal basis in collusion with the revenue staff, which were termed to be illegal, void and in operative on their (plaintiffs) rights. On the basis of aforesaid

allegations, the plaintiffs filed the suit (Annexure P1) for a decree of declaration, permanent/prohibitory injunction against the defendants in the manner depicted hereinbefore.

(4) The main defendant No.1 contested the suit and filed its written statement (Annexure P3), inter-alia pleading certain preliminary objections of, maintainability of the suit, estoppel, non-joinder & mis-joinder of necessary parties, cause of action and locus standi of the plaintiffs etc. On merits, defendant No.1 pleaded that its vendors (defendant Nos.2 to 7) have sold their suit land, within the limits of their respective shares and put the vendees in its possession thereof. There is a clear recital in the sale deed that all the co-sharers have orally partitioned the land and were in exclusive possession of their respective shares. Defendant No.1 alleged that defendant Nos.2 to 7 have sold their specific portion/killa numbers to it, by means of registered sale deed dated 19.9.2005 and mutation was rightly sanctioned in this respect. It will not be out of place to mention here that defendant No.1 has stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit. Similarly, the remaining defendant Nos.2 to 7 have filed their separate joint written statement (Annexure P4), toeing the line of pleadings as contained in the written statement of defendant No.1.

(5) Sequelly, during the pendency of the suit, defendant No.1 moved an application (Annexure P5) for amendment of written statement (Annexure P3) under Order 6 Rule 17 read with Section 151 CPC, so as to add the preliminary objection No.7-A in the following manner:-

> *"That after the purchase of the suit land and other land, defendant No.1 applied to obtain licence for setting up of a Group Housing Colony at village Kheri Kalan and Baselwa, District Faridabad and accordingly, licence No.1030 of 2006 was granted under the Haryana Development & Regulations of Urban Areas Act, 1975 and Rules 1976 made thereunder to defendant No.1 C/o M/s RIS Infrastructure Ltd. B-14, Ground Floor, Chirag Enclave, Opposite Nehru Place, New Delhi— 48 for setting up a New Group Housing Colony at village Kheri Kalan and Baselwa, Faridabad in respect of suit land and other lands as mentioned in the schedule annexed with the licence and*

according to the licence, defendant No.1 has been raising and has raised Group Housing Colony as per site plan enclosed regarding which licence was granted. The defendant No.1 has spent a huge amount for setting up of Group Housing Colony over the suit land and other land at Village Kheri Kalan and Baselwa, Faridabad and in these circumstances, the plaintiff is not entitled to seek equitable relief of injunction and hence, suit of the plaintiff is not maintainable in law and is liable to be dismissed."

(6) The plaintiffs refuted the prayer of defendant No.1 and filed their reply (Annexure P6), reiterating their claim as pleaded in the plaint, denied the genuineness of licence, bearing No.1030 dated 29.6.2006 (Annexure P2) and maintained that the issuance of this licence to it (defendant No.1), by way of manipulation with the Director, Town and Country Planning, has got nothing to do with the controversy involved in the main suit. The proposed amendment was termed to be not bonafide and it will cause a great prejudice to their (plaintiffs) case. After denying the remaining averments of the application (Annexure P5), the plaintiffs prayed for its dismissal.

(7) The trial court dismissed the application for amendment of the written statement, by means of impugned order dated 10.8.2011 (Annexure P7).

(8) Aggrieved by the decision of the trial Court, the petitioner (defendant No.1) filed the present revision petition, invoking the provisions of Article 227 of the Constitution of India, leaving this Court in lurch to think, as to what extent, the finding should be recorded with regard to the indicated controversy raised, deeply urged and invited by learned counsel for the petitioner in the instant petition. The same would naturally have the direct bearing on the real issue between the parties, to be determined by the trial Court, during the course of trial. Be that as it may, but in the interest of justice, the principle of **'safety saves'** has to be kept in focus as far as possible in this relevant behalf, while deciding the present petition. That is how, I am seized of the matter.

(9) At the very outset, assailing the impugned order, the learned counsel for the petitioner (defendant No.1) contended with some amount of vehemence that the land in dispute was orally partitioned between the

co-sharers. The petitioner has purchased the shares of defendant Nos.2 to 7, through the medium of indicated sale deed, for the purpose of setting up of a Group Housing Colony and the mutation of specific portion/khasra number has already been sanctioned, in pursuance thereof. The argument further proceeds that since the introduction of additional facts of the licence was very much essential, so, the trial Court has committed a legal mistake in dismissing the application of defendant No.1 for amendment of written statement. In support of the contentions, he has placed reliance on the judgments of Hon'ble Supreme Court in cases **B.K.Narayana Pillai *versus* Parameshwaran Pillai and another (1)** and **Usha Balashaheb Swami and others *versus* Kiran Appaso Swami and others (2).**

(10) Having heard the learned counsel for the petitioner (defendant No.1), having gone through the record with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant petition in this respect.

(11) Possibly, no one can dispute with regard to the crux of the observations of Hon'ble Apex Court in B.K.Narayana Pillai and Usha Balashaheb Swami's cases (supra), to the effect that the Court should be liberal in granting the prayer for amendment of pleadings, **if it is of the view that such amendment may be necessary for determining the real question in controversy between the parties,** unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. At the same time, it was ruled that "the amendment cannot be claimed as a matter of right and under all circumstances". But to me, the same would not come to the rescue of the petitioner in the instant controversy.

(12) As is evident from the record that plaintiffs claimed that the land in dispute is a joint land of all the co-sharers. It was never partitioned. Defendant Nos.2 to 7 have sold their shares to defendant No.1, by virtue of the sale deed, on the basis of which, illegal mutation and Tatima of specific portion/khasra number were got entered in its favour with the connivance of revenue officials. On the contrary, according to the contesting defendants that the suit land stands orally partitioned and the parties were in possession

(1) 2000 (1) SCC 712
(2) 2007 (5) SCC 602

of their respective shares before sale. The petitioner (defendant No.1) now sought to introduce, by way of proposed amendment, the fact of issuance of licence, bearing No.1030 dated 29.6.2006 (Annexure P2), under the provisions of The Haryana Development & Regulations of Urban Areas Act, 1975.

(13) Above being the position on record, the only short and significant question, though important that would arise for determination by the trial court in the main suit will be, as to whether the disputed land is a joint land as claimed by the plaintiffs or it was orally partitioned before sale, as urged on behalf of contesting defendants?

(14) It is not a matter of dispute that the suit land was an agricultural land and it can only be partitioned under the provisions of Chapter IX of the Punjab Land Revenue Act, 1887 (hereinafter to be referred as "the Act"). Assuming for the sake of argument (though not admitted), if the parties have orally partitioned the land, even then, such partition has to be reported to the Revenue-officer, as contemplated under section 123 of the Act, which postulates that "in any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition and on receiving the application, the Revenue-officer shall inquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 119, 120, 121 and 122 or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter."

(15) The mere contrary recital in the sale deed and mutation (without any legal partition), in pursuance thereof, is not sufficient in this regard. Unless and until, the agricultural land is legally partitioned under Chapter IX of the Act, the same would be deemed to be a joint property and if the co-sharers sell their specific portion/khasra numbers, even then, in law, the land would be deemed to be joint between the parties, such sale would amount to be sale of share in joint land and every co-sharer has an interest in the whole property and in every parcel of it. The possession of joint property by one co-owner, in the eye of law, would be possession of all even if all but one are actually out of possession.

(16) Meaning thereby, whether the land in dispute was joint or stood orally partitioned before sale, would be a moot point, to be decided by the trial Court. If it is proved on record that the suit land was never legally partitioned, then the sale in favour of defendant No.1, would be a sale of share in the joint land, notwithstanding the fact that specific portion/khasra numbers are mentioned in the sale deed or mutation. On the contrary, if it is otherwise proved that the land in litigation stood already partitioned before sale, then naturally, the plaintiffs would fail. In that eventuality, the issuance of licence (Annexure P2) on 29.6.2006 to defendant No.1 to establish a Group Housing Colony by the Town and Country Planning Department is alien/foreign and is not at all relevant to decide the real controversy between the parties. Only that amendment can be allowed, as may be necessary, for the purpose of determining the real issue between the parties, as envisaged under the amended provisions of Order 6 Rule 17 CPC and not otherwise. As indicated earlier, since the proposed amendment is not at all relevant to decide the real point between the parties, so, it cannot legally be allowed. Therefore, the contrary arguments of learned counsel for the petitioner-defendant No.1 "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

(17) Likewise, there is another aspect of the matter, which can be viewed from a different angle. What is not disputed here is that the plaintiffs filed civil suit, bearing No.139 of 3.3.2006 (Annexure P1). The licence (Annexure P2) was issued on 29.6.2006. The issues were framed in this case on 18.7.2006. That means, the licence was issued to it before the commencement of trial/framing of issues on 18.7.2006 (mentioned in para 5 of the grounds of revision).

(18) Again, it is not a matter of dispute that the petitioner has filed the application (Annexure P5) on 11.3.2011 for amendment of his written statement i.e. after about 4¾ years, after the issuance of the licence. No cogent explanation is forth coming on record, as to why the application for amendment of the written statement was not filed before the commencement of trial, which was only filed after about 4½ years, after the commencement of trial/framing of issues. Proviso to Order 6 Rule 17 CPC posits that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

As such, no explanation in this respect is forthcoming on record. Therefore, the application for amendment of written statement cannot legally be allowed.

(19) In this manner, since neither the petitioner filed the application for amendment of written statement before the commencement of trial/ framing of issues, nor has been able to satisfy the Court that in spite of due diligence, it could not raise the issue before the commencement of trial, nor it is relevant for the decision of the case, so, the proposed amendment cannot legally be permitted as provided under Order 6 Rule 17 CPC and in view of the law laid down by Hon'ble Supreme Court in case **Rajkumar Gurawara *versus* M/s S.K.Sarwagi & Co.Pvt.Ltd. & Anr. (3).**

(20) Moreover, the trial Court has reached a right decision, recorded the cogent grounds and rightly negatived the claim of the petitioner, vide (although not happily worded) impugned order in this relevant direction. Such order, containing the valid conclusions, cannot legally be set aside, in exercise of limited revisional jurisdiction of this Court, as contemplated under Article 227 of the Constitution of India, unless the same is perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order/conclusion (Annexure P3) deserves to be and is hereby maintained, in the obtaining circumstances of the case.

(21) No other legal point, worth consideration, has either been urged or pressed by the counsel for the petitioner (defendant No.1).

(22) In the light of aforesaid reasons and without commenting further anything on merits, lest, it may prejudice the case of either side during the course of trial, as there is no merit, therefore, the instant petition is hereby dismissed as such.

(23) Needless to mention that nothing recorded here-in-above would reflect, in any manner, on the merits of the case, as the same has been so observed for the limited purpose of deciding this revision petition in this context.

A.K. Jain

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(3) 2009 (1) Civil CC 001 (S.C.)