

1 Raghubir Singh Vs. Dharminder Singh.

IN THE COURT OF DEEPAL SINGH CHHINA, PCS, CIVIL
JUDGE(JUNIOR DIVISION),FEROZEPUR.

Raghubir Singh Vs Dharminder Singh

APPLICATION UNDER ORDER 6 RULE 17 CPC.

Present:-Sh. Vikas Kakkar Advocate counsel for plaintiff.

Sh. Ashok Kumar Raheja, Advocate counsel for defendant.

ORDER

This order of mine will dispose of application under order 6 rule 17 CPC read with section 151 CPC moved by the plaintiff.

2. Brief facts of the application of the plaintiff are that while preparing of the replication, it has come into knowledge that they have wrongly mentioned “ in possession” in the plaint by the counsel that due to inadvertence, misunderstanding, ever sight the relief of restoration of actual/ physical/cultivating possession of the suit land with mesne profit could not be claimed and mere suit for decree of declaration with consequential relief of the permanent injunction has been filed. Claiming the relief of actual/ physical/ cultivating possession of the suit land with mesne profit is very much essential to be claimed by the plaintiff to enjoy the fruits of decree to be passed in the present suit. Due to above mentioned reasons, the plaintiff intends to amend the heading as well as the para of the prayer clause of the plaint and further intends to add the line in para no.7 of the plaint as mentioned in the heading of this

application The proposed amendment is very much essential for the just and proper disposal of controversy between the parties. Hence, this application.

3. Upon notice, the defendant filed reply and submitted that the amendment sought by the plaintiff is not permissible as per law as the suit which has been originally filed by the plaintiff is for declaration and further for setting aside the sale deed and mutation sanctioned on the basis of sale deed. The plaintiff has now put up a new case by way of proposed amendment i.e suit for possession and for recovery of mesne profit. Thus, the proposed amendment will change the nature of the suit and it will cause great prejudice to the defendants. The plaintiff has alleged in the plaint itself that suit land was given on lease to the defendant. In view of the admission of the plaintiff made in the Para no.3 of the plaint, the plaintiff is estopped by own act and conduct to seek proposed amendment in the suit. The right has accrued in the favour of defendant and the plaintiff can not be allowed to seek proposed amendment in the present suit. On merits, the defendants denied all the averments of the application and prayer for dismissal of the application was made.

4. After hearing the learned counsel for the parties and going through the record carefully, this court is of the

considered opinion that the application under order 6 rule 17 CPC deserves to be allowed as the suit is still at the inception stage, Issues are yet to be framed and trial is yet to commence. So vide the amendment in the plaint, all the disputes regarding the suit property may be finally determined by the court in one suit itself. Further, the argument of defendant that the proposed amendment will take away admission made by the plaintiff, wherein he had admitted that defendant is in possession of the suit property in para No.3 of the plaint is not tenable. To the mind of the court, the proposed amendment will not take away admission made in favour of the defendant regarding his possession over the suit property. On the other hand vide amendment, this fact will stand established that the plaintiff is not in possession of the suit land and in fact, the defendant is in possession of the suit land. Vide amendment, the plaintiff has only sought an additional relief of getting possession back along with declaration in his favour. Moreover, in the plaint of the plaintiff, he had mentioned that defendants took land on lease and they used to give "Hissa Thekha" to the plaintiff and as such, the defendants are already in possession of the suit land at the spot from many years. So, the mistake regarding non-mentioning of the relief of gaining the possession back only seems to have been

omitted due to inadvertence as the plaintiff has himself asserted that the defendants are in possession of the suit land. So, with these observations, the application stands allowed.

5. However, now as the plaintiff has sought an additional relief i.e. now he seeks not only declaration that the sale deed is invalid but also consequential relief of possession. He has to pay an ad-volerum court fee as provided under Section 7(iv)(c) of the Court Fee Act as laid down by Landmark decision of Hon'ble Apex Court in case **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and other 2010 AIR(SC) 2807**. In fact, application under order 7 rule 11 CPC filed on behalf of the defendants was dismissed by learned Predecessor of court solely on the ground that no relief of possession has been sought by the plaintiff. Now he has chosen to ask for the relief of possession as well. Hence, he is liable to pay ad-volerum court fee.

The case stands adjourned to 23.2.2016 for affixing ad-volerum court fee.

Announced in open Court.
8.2.2016.
CHP

Sd/- (Deepal Singh Chhina),
Civil Judge(Jr. Divn.),
Ferozepur.

5 Ragbir Singh Vs. Dharminder Singh.