

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 1337 of 2010

Date of Decision : February 26, 2010

Narinder Kumar	Petitioner
Vs.		
Gulshan Lal	Respondent

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr. Vijay Kumar Jindal, Advocate
for the petitioner.

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L. N. MITTAL, J. (Oral) :

Plaintiff has filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 10.02.2010 (Annexure P-1), whereby application moved by the plaintiff for amendment of plaint has been dismissed.

The petitioner filed suit alleging that his grandfather Munshi Ram was owner in possession of the suit property. By way of oral Will, Munshi Ram gave the suit property to his sons including plaintiff's father Tilak Raj, who was given 50 sq. yds. area shown in red colour in the site plan. On the death of Tilak Raj, the plaintiff being his son and legal heir, has become exclusive owner in possession of the said portion measuring 50 sq. yds. Defendant is son of Munshi Ram and uncle of the plaintiff. The defendant was given separate portion in the house. Another son of Munshi Ram was given a third portion in the house. The plaintiff sought declaration

that he is owner in possession of the portion measuring 50 sq. yds., shown in red colour in the site plan. The plaintiff also sought permanent injunction.

In the amendment application, the plaintiff has alleged that the defendant has forcibly dispossessed the plaintiff from the aforesaid suit portion on 23.08.2009 during pendency of the suit and this fact is to be pleaded by amendment and further relief of joint possession of the suit property is to be claimed.

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

Learned counsel for the petitioner vehemently contended that the trial court has erroneously observed that the plaintiff in the witness-box has admitted on 08.01.2009 that the defendant was in exclusive possession of the suit property, but in fact, the plaintiff never said so. From the part of statement of the plaintiff, as read out by counsel for the petitioner, it is not clear whether there was any such clear admission by the plaintiff or not. However, the fact remains that the suit is already at the stage of rebuttal evidence and final arguments. The plaintiff would have separate cause of action if he has been illegally dispossessed from the suit portion on 23.08.2009. If title of the plaintiff is decided in the instant suit, the plaintiff can easily seek relief of possession of the suit portion, if he is successful in proving that he has been dispossessed during pendency of the suit. However, in the instant suit, he has to prove that he was in possession of the suit portion at the time of filing of the suit. The trial court would adjudicate upon the said question after appreciation of evidence. If proposed amendment is allowed, *de novo* trial of the suit would start, although the suit is already at the stage of final arguments.

In addition to the aforesaid, strangely enough, the plaintiff, by way of amendment, wants to seek relief of joint possession of the suit property and not exclusive possession of the suit portion, of which he

claims to be exclusive owner. It defies logic as to how relief of joint possession can be sought if plaintiff is exclusive owner of the suit portion.

In view of the aforesaid discussion, I find no illegality in the impugned order of the trial court dismissing petitioner's application for amendment of plaint.

The revision petition is without any merit and is accordingly dismissed in limine.

February 26, 2010

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**(L. N. MITTAL)
JUDGE**