

Punjab-Haryana High Court

Banke Behari Lal Sharma (Died), ... vs Sh. Sat Pal Sharma And Ors. on 24 May, 1990

Equivalent citations: (1990) 98 PLR 559

Author: A Bahri

Bench: A Bahri

JUDGMENT A.L. Bahri, J.

1. Banke Behari Lal. plaintiff has filed this Revision Petition challenging order of Subordinate Judge II Class, Ludhiana, dated May 12, 1986 allowing application under Order 6, Rule 17 of the Code of Civil Procedure partly and further allowing application under Order 1, Rule 10 of the Code of Civil Procedure with respect to impleading as defendant Sat Pal subsequent vendee.

2. Banke Bihari Lal filed the suit claiming himself to be owner in possession of the property in dispute, having fallen to his share in the family settlement arrived at in 1957. In the alternative, he claimed ownership by adverse possession. In 1983, Sat Pal son of Sh. A mar Nath entered into an oral agreement with Banke Behari Lal for sale of the property in dispute for Rs. 5,000/- and he received a sum of Rs 1,000/ in advance. The balance amount was agreed to be paid before the Sub-Registrar. However during pendency of the suit, the property was sold to Sat Pal son of Sh. Salag Ram. On these premises the following amendment was sought :--

Sat Pal son of Salag Ram to be shown as defendant and in the alternative suit for specific performance of agreement entered into on September 11, 1983, confirmed on September 12, 1983 and Dacembar .9, 1983 with respect to the building shown in red colour in the plan attached and thirdly in para 5 of the plaint Sub-para 5(a) to be added.

Details of the aforesaid facts to be incorporated that is there was family settlement and inspite of that there was agreement to sell in favour of the plaintiff for Rs. 5,000/-, out of which Rs 1,000/- was paid as advance. These terms were settled in the presence of Yash Pal and Lakhpat Rai on September(sic) 1, 1982. In this manner, the plaintiff was already owner in possession of the property under the family arrangement and nevertheless, as agreed he was always ready and willing to perform his part of the contract. That out of the total consideration of Rs. 5,000/-, Rs. 2,000/- having already been paid and only Rs. 3,000/-remains NO was obtained for payment of Rs. 1,000/-. Plaintiff was always ready and willing to perform his part of the contract and further details of the agreement were given, which were to be incorporated in the amended plaint. This application was contested by the defendants, inter alia alleging that these allegations were distinct for separate cause of action. The very character of the suit was being changed. There was no agreement to sell. The suit was filed for declaration of ownership on the basis of adverse possession; whereas proposed amendment sought to be introduced was inconsistent and no relief could be allowed on the basis of the agreement to sell.

3. The amendment was partly allowed to the extent that subsequent sale of property to Sat Pal son of Salag Ram could be taken into consideration as he was to step into the shoes of his vendor. He was impleaded as a party. With regard to amendment relating to the alleged contract of sale, the same was declined Hence this Revision Petition.

4. The plea sought to be introduced in the plaint by amendment is contrary to the plea already existing in the plaint. The case of the plaintiff originally was for declaration that he was owner of the property in dispute on the basis of the family partition and in the alternative on the basis of adverse possession. Now, if he is allowed to amend the plaint, primarily he would be conceding that the defendant is the owner of the property in dispute who had agreed to sell the same to the plaintiff. In this manner, apart from taking up inconsistent pleas, the nature of the suit will also be changed, that is, from a suit for declaration on the basis of title or adverse possession, to a suit for specific performance of the agreement. The trial Court was right in declining this part of the amendment. There is no merit in this Revision Petition which is dismissed. No costs.=