



CR-2223 of 2020 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CR-2223 of 2020 (O&M)

Decided on: 09.05.2024

Manohar Lal**...Petitioner****Versus****Sahil and others****...Respondents****CORAM: HON'BLE MRS JUSTICE RITU TAGORE**

Present: Mr. N. C. Kinra, Advocate
for the petitioner.

Mr. Manoj Makkar, Advocate
for respondents No.1 and 2.

None for respondents No.3 to 7.

Service of respondent No.8 is dispensed
with vide order dated 16.12.2020.

RITU TAGORE, J.

1. Challenge in this revision petition is to order dated 13.03.2020 (Annexure P-1) passed by learned Civil Judge (Junior Division), Rohtak in Civil Suit No.121 of 28.01.2016/23.06.2020 titled 'Manohar Lal Vs. Sahil etc', whereby an application filed by petitioner (plaintiff before the learned trial Court) for amendment of the plaint has been dismissed.

2. Arguing for the petitioner-plaintiff, learned counsel submits that the petitioner filed the above captioned suit, challenging the Will dated



15.02.2012 allegedly executed by Sh.Shyam Dass, father of the petitioner and respondents No.3 to 8 and grand-father of respondents No.1 and 2, being illegal null and void, and not binding upon his rights and other co-sharers, with further relief that petitioner is owner in possession of the suit property to the extent of 148 Sq yards with consequential relief for permanent injunction, restraining respondents No. 1&2 from alienating the suit property, detailed in the plaint (Annexure P-2).

3. Learned counsel next contended that upon notice, respondents No.1 and 2 caused appearance in the suit and filed their written statement and contested the averments of the petitioner. They set up a Will dated 15.02.2012 allegedly executed by their father and also mentioned the details of the property in their written statement as incorporated in the Will.

4. The learned counsel submits that petitioner filed an application for amendment of the plaint (Annexure P-3) in order to incorporate all the properties as disclosed by the respondents in the Will and consequent amendment in head note of the plaint, relief clause with further relief for mandatory injunction, directing respondents not to alienate the suit property. The respondents No.1 and 2 filed the reply (Annexure P-4) and resisted the aforesaid application. The learned trial Court vide order dated 13.03.2020 (Annexure P-1) dismissed the application primarily on the grounds that the property sought to be included in the plaint by way of amendment was not the subject matter of the parent plaint, therefore, it would change the nature of the suit and also the relief claimed is time barred.

5. The learned counsel argues that the petitioner-plaintiff filed suit for declaration about inheritance of the properties left by his father, Shyam



Dass. The suit being based on plea of inheritance is not subject to law of limitation. Thus, observation of the learned trial Court that amendment of the plaint is barred by time is unsustainable in the eyes of law.

6. Learned counsel next urges that observation of the learned trial Court that incorporation of other property in the plaint would change the nature of the suit is also ill founded because it is only after the written- statement filed by respondents No.1 and 2, the petitioner came to know about the other property included in the Will set up by the respondents. Thereafter, the petitioner sought to include said property in the suit, for the complete adjudication of the matter. Learned counsel stated that the application was moved at initial stage of service of the remaining defendants. The amendment is explanatory in nature and will not change the nature of the suit. The learned counsel also submits that the petitioner is not to lead any evidence after the amendment of the plaint. The learned counsel thus submits that impugned order suffers from infirmities and it should be set aside.

7. On the contrary, learned counsel for the respondents defended the impugned order, contending that the application for amendment of the plaint will change the nature of the suit and the amendment is clearly time-barred. The learned trial Court, rightly dismissed the application in a judicious manner and it does not call for any interference.

8. Suffice to say that the civil suit captioned above is pending adjudication before the learned trial Court. By way of amendment of the plaint, the petitioner-plaintiff intended to incorporate one of the properties as



mentioned in the application, with consequential relief of mandatory injunction the head note and relief clause of the plaint.

9. The assertions of the petitioner that he came to know about the other property from their pleadings and the Will set up by respondents, and further that the amendment application was filed at the initial summoning stage, could not be denied by the counsel for the respondents during the course of the arguments. Therefore, the amendment cannot be taken to have been moved at belated stage.

10. Further, the fact that petitioner filed the suit for declaration on the basis of inheritance of estate left by his father is also a matter of record. The petitioner has already incorporated the other properties in the plaint. The amendment is to add one more property along with other properties already mentioned in the plaint. The bar of limitation, as such, is not available, when a suit is filed on the basis of inheritance, as inheritance does not remain in abeyance. In this regard reliance can be placed on *Ganpat and another Vs Lachhman and others (2008) 2 PLR 624*, in which this Court observed that there is no limitation for a suit for possession based on inheritance and such a suit cannot be dismissed being time barred. Also in the case of *Gurcharan Singh and others Vs Angrez Kaur and another, 2008(4) RCR (Civil) 178*, this Court held that for a suit of declaration of title by inheritance, there is no limitation for such a suit especially when decree, Will or family settlement set up by the defendant are not proved to be in the knowledge of the plaintiffs.

11. In the circumstances, the aforesaid amendment appears to be clarificatory in nature and does not seem to change the nature of the suit or



cause of action, causing any prejudice to the respondents. Rather, it will help the Court in deciding the controversy in hand completely and judiciously. Yet, in **Raghu Thilak D. John Vs S. Rayappan and others, (2001) 2 SCC 472**, Hon'ble the Apex Court observed that "where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand."

12. It is fundamental principle of law that parties should be allowed to bring all the material facts that may enable the Court to decide the controversy completely and judiciously. The purpose of amendment is to narrow down the controversy by placing all material facts clearly on the record. The Court should assist the parties in bringing on record complete facts than to prevent them from exercising their rights on rigid technicalities. It has been repeatedly held in judicial decisions that power to allow an amendment is undoubtedly wide and may be appropriately exercised in the interest of justice. In this behalf, a useful reference can be made to the observations made in **Ganga Bai Vs Vijay Kumar & others (1974) 2 SCC 393**, wherein it was held that "the power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But exercise of such far reaching discretionary power is governed by judicial consideration and wider the discretion, greater ought to be the care and circumspection on the part of the Court." In **M/S Ganesh Trading Co. Vs Moji Ram (1978) 2**

SCC 91, Hon'ble the Supreme Court observed that "it is clear from the



foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

13. In *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*, 2022 AIR (Supreme Court) 4256 while referring *A. K Gupta & Sons Ltd. Vs. Damodar Valley Corporation*, AIR 1967 SC 96: (1966) 1 SCR 796, and *G. Nagamma and another vs. Siromanamma and another*, (1996) 2 SCC 25 observed as under:-

"26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the Courts generally, as a rule, decline to allow amendments, if a



fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.”

14. Having viewed the impugned order in the light of the settled proposition of law, that same does not withstand judicial scrutiny and is liable to be set aside. Accordingly, impugned order dated 13.03.2020 (Annexure P-1) is set aside.

15. One effective opportunity is granted to the petitioner to file the amended plaint. Also, petitioner is directed to appear before learned trial Court on due date of hearing and file the amended plaint.

16. Accordingly, with these observations the revision petition is allowed. It is made clear that the observations made herein are purely limited to this petition and have no bearing on the merits of the matter.

17. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

09.05.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No