

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1222 of 2015 (O&M)

Date of decision:23.02.2015

Bishamber (deceased) th. LRs Ramphal & others

....Petitioners

Versus

Harbans Lal & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.P.R.Yadav, Advocate, for the petitioners.

G.S.Sandhawalia J.(Oral)

CR No.4090-CII of 2015

Application has been filed for placing on record Annexures P5 to P19 and from exemption from filing certified copies of Annexures P9, P12, P17 to P19, is allowed. Said documents are taken on record, subject to just exceptions, for the purpose of deciding the present revision petition. Office to tag the same at appropriate place.

CR No.1222 of 2015

Challenge in the present revision petition is to the order dated 05.02.2015 (Annexure P4), whereby the Civil Judge (Jr.Divn.) Mohindergarh, has dismissed the application for amendment of the plaint after imposing costs of ₹5000/-. The sale deeds dated 06.02.2008 being the subject matter of challenge and the relief of possession, at this stage, could not be asked, is the reason given by the Trial Court. Reference has been made to various applications filed by the plaintiffs in support of the order to show that application for framing additional issues and for giving opportunities to the plaintiffs to lead evidence had also been closed.

Leaving apart the observations of the Trial Court, a perusal of the plaint would go on to show that the amended suit for declaration was filed and the decree dated 01.06.2006 was challenged. The subsequent mutations sanctioned on the basis of the judgment by virtue of the amendment made earlier in par No.2(a) was incorporated and the sale deeds dated 06.02.2008 in favour of Roshni Devi and Chhanno Devi, respondents No.13 & 14, were also challenged. The said pleadings were specifically controverted by the said respondents, in their written statement, filed on 20.08.2009 and it was pleaded that they were absolute owners on the basis of the said sale deeds and were in possession of the land and cultivating the same after paying the costs of registration fees and drafting and were *bona fide* purchasers.

The petitioners, thereafter, let the proceedings carry on and never filed any application for amendment of the plaint, as such, for converting the suit into a suit for possession. Rather the defendants also filed an application under Order 7 Rule 11 CPC, to contend that the plaintiffs had also not affixed proper Court fees and they were owners in possession. The application was also dismissed on 28.05.2013 on the ground that the suit was for declaration and no consequential relief was asked by the petitioner-plaintiffs. Thus the petitioners were aware of the lacuna in their case. It is, thereafter, the present application for amendment was filed on 04.02.2015 (Annexure P2), after almost 2 years.

However, perusal of the same also does not show that any averment was made regarding due diligence and as to why the said relief could not have been prayed for at an earlier point of time. In the reply to the application also, it was stated that the plaintiffs had the knowledge from the very beginning and were knowing the status of possession and the case was at the initial stage of arguments. Resultantly, the impugned order has been passed.

Division Bench of this Court in *S.Bhagat Singh Vs. Satnam Transport Co. Ltd. & others AIR 1961 Punjab 278* to contend that the relief of amendment can be granted even at the appellate stage and therefore, the suit would not be maintainable and also placed reliance upon the judgment of the Apex Court in *Vinay Krishna Vs. Keshav Chandra & another AIR 1993 SC 957* to contend that the necessary amendment should be allowed.

After hearing counsel for the petitioners, this Court is of the opinion that after the amendment in the year 2002 in the Code of Civil Procedure, 1908, reliance upon the Division Bench judgment of this Court is without any basis, in view of the amendment which has been incorporated in Order 6 Rule 17 CPC, whereby it has been specifically provided in the proviso that once the trial has commenced, amendment is not to be allowed until there is due diligence and a condition has been placed before the Court.

The purpose of amendment has been discussed time and again by the Apex Court to hold that it was for the purposes of speedy disposal of the cases. The only exception which was made out that if the party could show due diligence or there was something which was not in their knowledge, the Court could allow amendment in such cases. The principles have been laid down by the Apex Court in *Ajendraprasad N.Pandey Vs. Swami Keshavprakeshdasji N. (2006) 12 SCC 1* wherein the exception of the amendment being allowed after the evidence had started was highlighted and only where due diligence was proved, amendment was to be allowed. Relevant observations read as under:

“54. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash vs. Nankhu & Ors. (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he

could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).

55. The judgment of the High Court recording concession by counsel for the defendant reads thus:

"22. However, when one examines the facts of the case, and applies that the conduct of the defendants goes to show that the exercise, namely, filing of application Exh. 95, is directly in conflict with the object of the amendment, i.e. to adopt a dilatory tactic. It is admitted by learned senior Advocate appearing on behalf of the defendants that all the issues raised by way of proposed amendment in the written statement were taken before this Court in the Appeal from Order filed by the present defendant in the Civil Appeal filed before the Apex Court, in the Appeal From Order in the second round before this Court and again in a special leave petition filed before the Apex Court in the second round. Hence the defendants can not plead absence of knowledge after exercise of due diligence. If this be the position the approach adopted by the trial Court can not be stated to suffer from any infirmity so as to call for intervention at the hands of this Court in a petition under Article 227 of the Constitution of India."

56. In the instant case, the appeal was filed in the second round on 09.10.2002 as could be seen from the dates and events mentioned in the counter affidavit. Special Leave Petition in this Court was filed on 07.07.2004. Additional written statement has been filed on 24.11.2005. Delay in filing the additional written statement from 09.10.2002 to 24.11.2005. From 09.10.2002, the matters sought to be introduced by defendant by way of additional written statement was known to defendant/appellant. The application in respect of additional written statement does not make an unequivocal averment as to due diligence. The averment only reads as follows:-

"Under the circumstances, the facts which were submitted in the said Appeal from Order before the High Court and the facts which are now being submitted in the present application could not be submitted before this Court inspite of utmost care taken by the defendants."

57. The above averment, in our opinion, does not satisfy the requirement of Order VI Rule 17 without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. As held by this Court in Kailash vs. Nankhu & Ors. (supra), the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.”

As noticed, in the present case written statement was filed in the year 2009. The parties were well aware of the status *inter se* and specific stand was taken as to who was in possession. The petitioners chose to continue with the proceedings and at the belated stage, have now filed the application which, in view of the observations of the Apex Court, as reproduced above, at this stage, cannot be permitted. Accordingly, the impugned order which has been passed by the Trial Court, in such circumstances, is not liable to be interfered with.

Counsel for the petitioners, at this stage, has vehemently submitted that certain observations have been made against the conduct of the counsel for moving the application by the Trial Court.

The present revision petition has been filed by the plaintiff-petitioners and counsel before the Trial Court is not a party in the case in hand and therefore, to opine into the said issue is not necessary for the purpose of deciding the present revision petition.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

23.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE