

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.1241 of 2013.
Decided on:-February 21, 2015.

Attar Singh.Petitioner.

Versus

Bharpai and anotherRespondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Rajender Chhokar, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application under Order VI Rule 17 CPC for amendment of the written statement filed by defendant No.2, petitioner herein, by the lower court vide impugned order dated 17.1.2013 (Annexure P-3), forms the genesis of this revision petition.

2. The applicant-defendant No.2, petitioner herein, in the written statement furnished by him had taken up a stand that he was adopted by deceased Ganga Sahai and was living with him. It was elaborated that Ganga Sahai had executed a gift deed dated 9.7.1959 in his favour.

3. By way of amendment in the written statement, the applicant-

defendant No.2, petitioner herein, wanted to completely remove the factum of his adoption by deceased Ganga Sahai pleaded earlier and wanted to amend the written statement averring that gift deed dated 9.7.1959 was executed in his favour on the basis of love and affection.

4. This application was strongly contested by the respondent-plaintiff and finding the move of the applicant-defendant to be of such nature that it was to completely replace the earlier written statement, had rejected the prayer of the applicant-defendant No.2, petitioner herein.

5. In the present revision petition, it is claimed that it was merely a clerical error and Ganga Sahai (deceased) was wrongly mentioned to be adoptive father of the applicant-defendant-petitioner, whereas he used to live with Ganga Sahai right from his childhood out of love and affection. It is claimed that the amendment sought for should have been allowed to incorporate genuine and truthful claim of the applicant-petitioner.

6. Counsel for the respondent has urged that the application for amendment is a cleverly contrived move to entirely change the sum and substance of the plea of the defendants. In short, it is claimed that entirely new and distinct plea is sought to be added in contradiction of the stand earlier taken by the applicant-defendant-petitioner.

7. Hearing has been provided to the counsel for the parties while perusing the paper book.

8. At the outset, counsel for the petitioner citing ***Abdul Rehman and another Versus Mohd. Ruldu and others 2012(4) RCR (Civil) 481 (SC)*** has claimed that the main purpose for allowing the amendment is to minimise the litigation. Support has also been sought from ***Tara V. Ganju***

and another Versus Basant and Co. and others 2013 (4) RCR(Civil) 60 (SC). It is urged further that amendment before commencement of the trial may be allowed. Support in this regard has been sought from ***Vidyabai and others Versus Padmalatha and another 2009(1) RCR (Civil) 763 (SC).***

9. With due deference to the law laid down in the above authorities, facts in the case in hand are entirely different. First of all, the written statement on record is joint one by both the defendants but the amendment has been sought only by applicant-defendant No.2 and not by defendant No.1. The lower court was right in coming to a conclusion that possibility of adversely affecting the rights of non-applicant/defendant No.1 cannot be ruled out. It is also to be noticed that there is absolutely no explanation coming from the applicant-defendant No.2, petitioner herein, as to why such request for amendment of the written statement has not come from non-applicant/ defendant No.1 as well.

10. During the course of arguments, it was also contended by the counsel for the petitioner that though the facts now sought to be pleaded had been disclosed to the counsel but he had made the pleadings against the factual matrix disclosed by the petitioner. On 21.5.2014, following order was made by this Court:

“Learned counsel for the petitioner would file an affidavit as to how old was defendant No.2 at the time of alleged adoption, as the averments of adoption is reiterated in the application for amendment of the written statement. He would also disclose whether the counsel who is said to have let him down and acted beyond instructions is still the counsel of the 2nd defendant in the trial Court.”

11. By way of affidavit filed in pursuance of this order, very deftly it is mentioned as on the next page:

“The age of the defendant No.2 (petitioner) is about 10 years at the time of the gift deed i.e. Vasika No.559 dated 9.7.1959 and presently he is about 65 years old. Moreover, the applicant has also changed his counsel in the trial court. Earlier his counsel was Mr. Budh Ram Yadav Advocate and now he is being represented by Sh. R.S. Yadav Advocate.”

12. When application for amendment (Annexure P-1) is perused, it transpires that it was filed through the same counsel viz. Sh. B.R. Yadav who had earlier settled the written statement interalia of the applicant-defendant No.2, petitioner herein. If the counsel has been changed subsequently, the same is of no significance. Very deftly, in the affidavit, date of change of counsel has not been mentioned and even the query by this Court vide order dated 21.5.2014 with regard to age of the applicant-defendant No.2, petitioner herein, at the time of adoption has not been answered at all.

13. It is, thus, clear that when existing written statement is read in relation to the application for amendment therein, it emerges that it is a patent case of dishonest and malafide application. A clear case that deceased Ganga Sahai had adopted the applicant-petitioner and because of such adoption, gift deed dated 9.7.1959 had been executed in his favour, has earlier been set up. Now the case of adoption is completely being withdrawn without explaining reasons for withdrawal of such averments. Even gift-deed of 9.7.1959 is now sought to be supported with consideration of love and affection whereas earlier it has been pleaded that it was because of adoption as son, that such gift deed had been executed by Ganga Sahai in favour of the applicant-petitioner.

14. At this stage, reference may be made to authority titled as ***Revajeetu Builders & Developers Versus Narayanaswamy and sons & others 2010(1) RCR (Civil) 27 (Supreme Court)*** wherein the Hon'ble Apex Court has observed that there are some factors which are to be taken into

consideration while dealing with applications for amendments. Relevant observations of the Hon'ble Apex Court in para Nos.67 to 70 are as below:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

All the points mentioned in this authority go against the applicant-defendant

No.2, petitioner herein.

15. Looking from yet another angle, the amendment sought for by the applicant-petitioner is not even required for complete and effective adjudication of the matter in dispute. The application for amendment is clearly a move to completely withdraw the earlier written statement and to substitute it with the present one. Moreover the facts which are now sought to be pleaded were well in the knowledge of the applicant-defendant No.2, petitioner herein. The suit was instituted on 19.4.2011 whereas application for amendment of the written statement was dismissed on 17.1.2013.

16. Keeping in view the totality of facts and circumstances as discussed earlier, the impugned order is not only well written but also takes into account all the relevant facts and circumstances and the application under Order VI Rule 17 CPC (Annexure P-1) was rightly dismissed by the lower court vide impugned order dated 17.1.2013 (Annexure P-3).

17. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

February 21, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes