

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2729 of 2013.

Decided on:-January 30, 2015.

Kulwant Rai.

.....Petitioner.

Versus

Jagan Nath and others

.....Respondents.

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

Argued by:- Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. M.J.S. Bedi, Advocate
for respondents No.1, 9 and 10.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application for amendment of the plaint vide order of 1.4.2013 (Annexure P-3) by the lower court, forms genesis of this revision petition.

2. As per the suit originally filed, the applicant-plaintiff, petitioner herein, had sought a decree for separate possession by way of partition of the suit land in terms of plaint dated 3.12.2010 (Annexure P-1).

3. By way of amendment, entire tenor and texture of the suit is sought to be changed by offering pleadings by the plaintiff, petitioner herein, to the effect that his father Gurdev Singh was owner in possession of the suit property to the extent of $\frac{1}{2}$ share, whereas the other $\frac{1}{2}$ share was purchased

by him from his brother Baldev Singh vide sale deed dated 25.8.1975 and thus he had then become absolute owner of the suit property. It is further averred that thereafter $\frac{1}{2}$ share of the suit property was transferred by Gurdev Singh (deceased) in the name of his son Jagannath, respondent No.1 herein, vide Will dated 1.9.1998 whereas the remaining $\frac{1}{2}$ share remained with him. Power of attorney was also given to respondent No.1 by respondent No.2, his mother and respondent No.10, his sister, respondent No.1 being power of attorney, executed transfer deed in favour of his son Varinder Pal leaving no share of respondents No.2 and 10 in the suit land.

4. The suit was filed on 3.12.2010, whereas all these facts sought to be added now pertain to the years earlier to 2010. Even otherwise, completely a different story has been put forth in the application for amendment, which is sought to be introduced in the plaint. If such an amendment is allowed, it would entirely change the tenor and texture of the averments made by the plaintiff in his plaint, in fact, substituting the earlier plaint with the new one completely bringing new cause of action and new dispute.

5. The learned lower court was right in adjudicating that even when witnesses of the plaintiff have already been examined and no whisper for such amendment was made ever, the application is not only delayed and belated but is, in fact, malafide and is a venture to blur the real question pleaded in the plaint.

6. Issues in the suit were framed on 5.3.2012. Trial has already commenced. The plaintiff, petitioner herein, has already examined two witnesses who have also been cross-examined. When questioned as to how the amendment sought for by the plaintiff would more competently and effectively be helpful in adjudicating the controversy, no satisfactory reply has come forward on behalf of the plaintiff, petitioner herein.

7. Hon'ble Supreme Court in ***Revajeetu Builders & Developers Versus Narayanaswamy and sons & others 2010(1) RCR (Civil) 27***, on the matter of amendment has held in para Nos.67 to 70 of the judgment 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 these circumstances detailed in this authority go against the plaintiff, petitioner herein.

8. Proviso to Order VI Rule 17 CPC also needs to be cited hereunder:

“Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

9. As has already been noticed earlier, the trial has begun. Two witnesses of the plaintiff had already been examined. Sequelly, even this aspect of the proviso to Rule 17 of Order VI CPC goes against the plaintiff, petitioner herein.

10. Keeping in view the totality of facts and circumstances as discussed earlier, the application under Order VI Rule 17 CPC (Annexure P-2) was rightly dismissed by the lower court vide impugned order dated 1.4.2013 (Annexure P-3).

11. Sequelly, no ground to interfere with the impugned order is made out, which is correct on facts as also in law and has no infirmity. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

January 30, 2015

'Yag Dutt'

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