

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

CR No. 2988 of 2015

Date of Decision: 4.5.2015

Devi Saroop and others

....Petitioners

versus

Kamal Kumar Gupta and others

....Respondents

CORAM: - HON'BLE MR. JUSTICE K.KANNAN

Present: - Mr. Avnish Mittal, Advocate for the petitioners.

K.KANNAN, J.

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The revision is against the order of the trial Court allowing amendment under Order 6, Rule 17 CPC. The respondent-plaintiff has originally filed a declaratory suit relating to the properties claiming himself to be the owner along with his sister and he was literally seeking to set aside a sale deed which has been executed in favour of the contesting defendants in the year 1954 on the basis of which a mutation was also reported to have been sanctioned. In relation to the same property, the plaintiff's sister who is defendant in the suit is reported to have filed a suit claiming right in the property after the suit was decreed in favour of the sisters. There was a compromise at the Appellate Court on 25.4.1998.

In the year 2002, another sister of respondent/plaintiff-Snehlata who is also another defendant in the suit has assailed the compromise by a suit but failed in her attempt in proceedings upto Supreme Court. The Courts have earlier found that the plaintiff in the suit was barred by principle of estoppel from asserting any right contrary to the compromise and the Court has also found that the suit is barred by limitation.

The plaintiff who is the brother of Snehlata has reenacted the whole game by means of a new suit making claim in respect of the property as belonging to him along with his sisters. During the pendency of the suit, it has allowed the amendment that the mutation that took place on the basis of compromise was false and not binding on him. This according to the defendants is barred by limitation and ought not to have been allowed. According to the counsel, the amendment has been brought after the commencement of the trial and violating the procedure under Order 6 Rule 17 CPC. I must observe, if the claim for right in the property had already been made, by introducing the relief that mutation and the compromise were invalid and not binding, nothing really changes. The plea taken is only explanatory which is already filed and if the claim was barred by limitation at the time of institution of the suit then the plea of limitation would be possible to be taken even now. The prejudice could be taken only in a situation where at the time of institution of the suit there was no bar and by the time the amendment is brought it should have been barred. As of now, the defendants cannot be prejudiced for it is always competent to contend that the relief which the plaintiff has sought for is barred by limitation.

I do not find any illegality about the order requiring intervention. The order is sustained and the revision is dismissed but with liberty to the defendants to take up all pleas relating to the bar of limitation either by way of amendment of the written statement or by additional statement as contemplated in the order 8 Rule 9 CPC.

The civil revision is dismissed.

(K.KANNAN)
JUDGE

4.5.2015/preeti