

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3071 of 2015

Date of Decision.08.05.2015

Col. J.S. Penag

.....Petitioner

Versus

Dr. Rajinder Singh and others

.....Respondents

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Rozer Kumar Aggarwal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

-. -

K. KANNAN J. (ORAL)

1. The revision petition is against the order allowing for amendment of suit which was filed for declaration of title to the property to include also the relief of recovery of possession. The suit had been filed by the son of one Teja Singh claiming the property as belonging to him as heir at law and making a reference to a mutation that had been entered in his name after his father's death. The contesting defendants were the daughter-in-law and children who claimed under a Will of Teja Singh where the properties were said to have been bequeathed in their favour. The purchaser from the daughter-in-law through document produced under Annexure P-2 was also a party to the said suit.

2. The contentions raised in defence were that the suit was filed by the plaintiff on the basis that he was the owner of the property

by virtue of a mutation entered in the year 2001 and the amendment which was filed in the year 2015 would be barred by limitation. The counsel would refer me to the judgment of the Supreme Court in Revajeetu Builders & Developers Vs. Narayanaswamy & sons and others 2010(1) RCR (Civil) 27 that says that any amendment which is barred by law, if a suit had been instituted on the day when the amendment was brought, shall not be permitted. It is also the contention that very nature of suit will change and he shall not be permitted to bring such an amendment. The further objection is that the Court fee has not been ordered to be paid for the amendment and the defendant has not been granted any opportunity to file amended written statement pursuant to the amendment which was being permitted to the plaintiff.

3. Apart from the last two objections, all other objections are untenable and deserve to be rejected. A person who files the suit contending that he has become owner of the property and makes a reference about mutation cannot be taken to pitch his source of title to the mutation. Mutation of a revenue entry is invariably an evidence of title and not the source of title itself. A claim made by a plaintiff of inheritance shall only be the source of title and any transfer in revenue entry or any other form that obtains in favour of the plaintiff cannot be taken to be the source. If the suit has been filed contesting a transaction of sale by a daughter-in-law and the daughter-in-law makes her defence on the basis of a Will, there is no issue of limitation that can ever be cast against plaintiff; at least prima facie so if the defendant's purchase itself is within a period of 12 years from the time

when the amendment is brought. A declaratory action by itself cannot secure what is appropriate because Section 34 requires that where a plaintiff is merely for declaratory relief, he is bound to bring and seek for ancillary relief also, if it is capable of being sought for. A suit for declaration ought not to be permitted to be thrown off on a technical plea, unless there is a well grounded plea of limitation. I do not find anything on the face of record to find an issue of limitation as obstructing the plaintiff's amendment.

4. The Supreme Court in Revajeetu Builders & Developers (supra) was dealing with a case relating to an agreement of sale where the plaintiff had given up his claim for suing for specific performance and had brought a claim only for recovery of money. If he was trying to make a plea for amendment of the plaint to seek for possession of property, he was literally attempting to make a claim to the property which he had given up. The Court was, therefore, holding that in such a circumstance, an amendment would not be allowed since the nature of suit itself had changed. If the suit for declaration is made and the relief is sought also for recovery of possession, it ought to be taken an ancillary relief and ought not to be taken as change in nature of suit. The declaratory action in respect of immovable property is the substantial relief and recovery is an ancillary relief which is not substantial in that sense. However, it may have an important bearing on the maintainability of suit and if the plaintiff was bringing an amendment to seek for recovery of possession as well, Court found it appropriate to allow the amendment.

5. The learned Senior Counsel would cause an objection that

court fee has not been properly paid. In an action for recovery of possession, the Court is bound to ensure that the amendment is accompanied with a proper court fee which may become necessary for the relief of recovery of possession. The Court shall direct the plaintiff to pay the court fee and if the direction is not complied with, it may resort to the provisions under Order 7 Rule 11 (2) CPC as regards the manner of treatment of such a plaint which seeks for a particular relief for which adequate court fee is not paid. The issue of payment of court fee is invariably a matter between the Court and the litigant, for the Court is bound to act as custodian of such interest as regards State revenue and it shall not be necessary for the defendants to join issue on the same unless there is an issue regarding the jurisdiction of the Court itself. Jurisdiction will not alter the maintainability of the suit before the Court below where the case is instituted. It is unnecessary for the defendant to complain that court fee not has not been properly paid.

6. Every amendment which is brought forth on new fact or for securing new relief ought to allow for a right of additional defence either by means of amendment to the written statement which is already filed or by additional written statement in the manner contemplated under Order 8 Rule 9 CPC, I clarify that the petitioner will have such a right of amendment or additional pleadings pursuant to the amendment which has been ordered. The learned Senior Counsel wants me to add that he must have a specific time granted before when he can file an amended written statement or an additional statement. I fix a time of two weeks as he pleads for filing his written statement from the date of receipt of copy of this order.

7. The order passed by the Court below is maintained and the civil revision is dismissed but with the above observations.

(K. KANNAN)
JUDGE

May 08, 2015
Pankaj*