

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

Civil Revision No.299 of 2014

Date of Decision: 24.12.2015

Harvinod Singh @ Vinod Singh

.....Petitioner

Vs

Jagjivanjit Singh @ Bawa Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate
for the petitioner.

Mr. Mandeep Sachdev, Advocate
for respondents No.2, 10 and 11.

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 03.12.2013 passed by Civil Judge (Sr. Divn.), Jalandhar, dismissing the application under Order 6 Rule 17 CPC for amendment of the plaint.

[2]. Plaintiff/petitioner filed suit for declaration to the effect that he is owner in possession of land measuring 18 *Marlas* 124 Sq. ft. out of land measuring 21 *Marlas* as detailed in the plaint on the basis of registered sale deed dated 07.02.1994 executed by Satnam Singh, father of respondents No.1, 2, 4

and husband of respondent No.3 through general power of attorney Sh. Hardial Singh who was father of Satnam Singh.

[3]. Petitioner alleged that he is a Non-resident Indian and is working at New York in United States of America.

[4]. Plaintiff filed the suit on the basis of title drawn from the sale deed which was executed by Hardial Singh, father of Satnam Singh on the basis of registered general power of attorney dated 05.02.1992. The full consideration was received by Satnam Singh through his father. Although physical possession was handed over to the plaintiff, however since the plaintiff/petitioner had left India, therefore, mutation of the sale deed dated 07.02.1994 could not be sanctioned.

[5]. Plaintiff got a house constructed on the land comprising of seven rooms, three bathrooms and a store besides getting electric and water connection in the house since 1994 onwards.

[6]. Plaintiff further alleged that in the month of December 2006, he came to India and it came to his knowledge that due to non-sanctioning of mutation Hardial Singh attorney of Satnam Singh had further sold the land in favour of respondents No.6 and 7. Respondent No.6 further sold an area of 5 Marlas in favour of Chander Parkash (defendant No.8 now deceased). The fraudulent instance of sale prompted the plaintiff/petitioner to file the suit.

[7]. During the pendency of suit at the time of plaintiff's evidence, plaintiff/petitioner came to know about the date of death of Satnam Singh. It was only on 19.03.2013, when plaintiff/petitioner had gone to the village where Satnam Singh was residing, he came to know about the date of death of Satnam Singh i.e., 12.11.1994, consequently, he applied for issuance of death certificate from the Registrar of birth and deaths, Punjab, Chandigarh on 20.03.2013 and thereafter an application for amendment was filed.

[8]. The case was fixed for evidence of defendant No.8 on 16.09.2013. Plaintiff used to come India after six months or a year from United State of America. Satnam Singh son of Hardial Singh (father of defendants No.1 to 4) and husband of defendant No.5 were residents of village Jhalbe, Tehsil and District Jalandhar. Satnam Singh had given general power of attorney to Hardial Singh on 05.10.1992. Hardial Singh executed sale deed dated 07.02.1994 on the basis of said authority in favour of plaintiff Harvinod Singh @ Vinod Singh.

[9]. Since Hardial Singh is alleged to have executed the sale deed in favour of defendants No.6 and 7 and defendant No.6 is alleged to have sold the property further to defendant No.8 vide sale deed dated 11.04.1997, 12.11.1998 and 18.12.2001, the plaintiff came to know that Satnam Singh had

already died on 12.11.1994, therefore, authority to sell the land subsequently was without jurisdiction and was the result of fraud.

[10]. Trial Court dismissed the application vide the impugned order dated 03.12.2013.

[11]. Apparently, Hardial Singh got power of attorney from Satnam Singh on 05.10.1992 and sale deed was executed on 07.10.1994 in favour of the plaintiff. Satnam Singh died on 12.11.1994 and, therefore, any transfer made after 12.11.1994 by Hardial Singh would be illegal. Apparently sale deed were executed by Hardial Singh in favour of defendants No.6 and 7 after 1994 i.e. on 12.11.1998 in favour of Kuldip Singh and on 18.12.2001 in favour of Manjit Kaur. The transfers vide sale deeds dated 11.04.1997, 12.11.1998 and 18.12.2001 are null and void and accordingly amendment is sought by the plaintiff on these lines.

[12]. Sale deed dated 07.02.1994 in favour of plaintiff, if proved would render other sale deeds nullity in view of date of death of Satnam Singh to be 12.11.1994. Death of Satnam Singh, even if proved to be prior to sale deed in favour of respondents, then also sale deeds have to go.

[13]. Learned counsel for the respondents vehemently contends that the legal representatives of Satnam Singh have

not challenged the factum of sale deed in favour of respondents.

In case the amendment is allowed, there will be a *de novo* trial because even, if the document is taken to be a public document it has to be proved on record. Ingredients of due diligence and knowledge are not attracted according to learned counsel for the respondents.

[14]. I have considered the submissions made at the Bar.

[15]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in

the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[16]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not

satisfied, the amendment cannot be allowed. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way it is intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment following principles are required to be taken into consideration:-

- a. Whether the amendment sought to be made is imperative for effective adjudication of the matter?
- b. Whether the amendment is *bona fide* or *mala fide*?
- c. The amendment should not cause such prejudice to the opposite party which cannot be compensated in terms of adequate cost.

- d. Whether the proposed amendment changes the nature and character of the suit?

As a Rule the Court should reject such amendments if fresh suit on intended cause of action is barred by limitation on the date of filing of application of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In **Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27**, the Hon'ble Apex Court highlighted the aforesaid principles to be followed meticulously.

[17]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be

exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed if the same subserves the cause of justice and avoids further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others**

vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.

[18]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[19]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or *mala fide* in nature? The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763**, the Hon'ble Apex Court while relying

upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844, Kailash vs. Nanhku and ors., (2005) 4 SCC 480, and Rajesh Kumar Aggarwal vs. K.K. Modi, 2006(2) RCR (Civil) 577 and AIR 2006 SC 1647** reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078** held that the discretion under Order 6 Rule

17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse. The Court must do full and complete justice between the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court.**

[20]. It is also a settled principle of law that merely because the proper relief has not been claimed in the suit, that itself is not sufficient to dismiss the suit without affording an opportunity to amend the plaint. Reliance can be placed on **Baljit Singh vs. Jot Ram, 1994(3) PLR 261, Jeet Singh @ Ranjit Singh vs. Baboo Singh (died) by LR and another, 1997(3) RCR (Civil) 676, and Taranjit Kaur and others vs. Navneet Kaur and others, 2006(2) RCR (Civil) 279.**

[21]. Taking stock of situation as appearing on record, I am of the considered view that the amendment need to be allowed in the interest of justice as it will effectively adjudicate the *lis* between the parties.

[22]. Accordingly, present revision petition is allowed,

consequently, order dated 03.12.2013 passed by Civil Judge (Sr. Divn.), Jalandhar is set aside and application filed by the plaintiff/petitioner under Order 6 Rule 17 CPC for amendment of the plaint is allowed.

December 24, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**