

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

Civil Revision No.3538 of 2014

Date of Decision: 24.12.2015

Smt. Shanti Devi and others

.....Petitioners

Vs

Partap and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Anurag Jain, Advocate
for the respondents.

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]. Petitioners have assailed order dated 14.05.2014 passed by Civil Judge (Jr. Divn.) Hisar vide which application under Order 6 Rule 17 CPC for amendment of the plaint has been rejected.

[2]. Plaintiffs/petitioners sought amendment of the plaint on the ground that plaintiffs are in actual and physical possession of the suit, but out of abundant caution and to avoid future complication seek indulgence of the Court to permit them to

claim alternate relief of possession that in case defendants are found in possession of the land, decree for possession be also passed in their favour.

[3]. Plaintiffs wanted to add the following words in the headnote of the plaint:-

“and alternatively in case the defendants are found in possession of the land in suit, a decree for possession be also passed in favour of the plaintiff.”

[4]. Resultantly para No.8-A is sought to be added in the aforesaid manner.

[5]. The application for amendment has been contested by the defendants on the ground that the case is fixed for plaintiffs' evidence and last opportunity was granted to the plaintiffs and at this stage end, plaintiffs cannot be allowed to revert back to their pleadings by changing the nature of the suit.

[6]. Apparently alternate plea of possession is sought to be added that in the event of finding defendants to be in possession of the suit land ultimately, then a decree of possession be granted in favour of the plaintiffs.

[7]. The alternate decree of possession is being sought by the plaintiff that though the plaintiffs are in actual and physical possession of the suit land, but in case they are dispossessed during pendency of the suit, in that eventuality the alternate decree for possession is sought to be granted.

[8]. According to learned counsel for the petitioners the amendment in question would bring complete adjudication of the controversy between the parties and is not going to change the nature of the suit, as Court is always empowered to take notice of subsequent events.

[9]. 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.

[10]. 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.

[11]. 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.**

[12]. 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.

[13]. 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 are *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 to 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.**

[14]. 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.**

[15]. Learned counsel for the respondent has vehemently opposed the plea of the amendment in the plaint at the fag end of the suit on the strength of **J. Samuel and others'** case (supra).

[16]. In view of discussion already made that the proviso to the Rule in the context of due diligence and knowledge has been duly explained in the preceding paras. The proposed

amendment will not change the nature of the suit in any manner, rather it will facilitate the Court to decide the controversy in a proper manner. It is only an alternate plea which is sought to be added. It will not prejudice the case of the defendants.

[17]. Since the civil cases are to be decided on the basis of preponderance of probability of evidence and the main prayer in suit is that the plaintiffs are in actual and physical possession of the suit land and it is only an alternate plea that is sought to be incorporated that in the event of finding defendants to be in possession of the suit land on account of dispossession of the plaintiffs during pendency of the suit, then an alternate decree for possession is to be passed. Such a plea cannot be treated to be a plea causing irreparable loss to the defendants.

[18]. Ingredients of amendment as discussed in preceding paras, in considered opinion of this Court are satisfied, resultantly the impugned order dated 14.05.2014 passed by Civil Judge (Jr. Divn.) Hisar is set aside.

[19]. Accordingly, the revision petition is allowed, thereby allowing the application under Order 6 Rule 17 CPC for amendment of the plaint.

December 24, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**