

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

**Civil Revision No.4731 of 2014(O&M)
Date of Decision: 24.12.2015**

Dhoop Dass and others

.....Petitioners

Vs

Mandir Shree Hanuman Ji Maharaj and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.K. Gupta, Advocate
for the petitioners.

Mr. Ajay 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]. In this revision petition order dated 05.07.2014 passed by Civil Judge (Jr. Divn.) Hisar has been assailed vide which application for amendment of plaint filed by the plaintiffs/respondents has been allowed.

[2]. Plaintiffs filed a suit for declaration in respect of ownership and possession over the suit land by setting aside mutation dated 28.04.1952 and consequential relief of permanent injunction was also sought restraining the

defendants from interfering in possession of the plaintiffs.

[3]. Rambir and Rajbir defendants No.2 and 3 in the present suit filed civil suit No.195-C of 2007 for permanent injunction. The said suit was decreed vide judgment and decree dated 23.04.2014 passed by Additional Civil Judge (Sr. Divn.) Hisar.

[4]. Defendant No.1 Dhoop Dass Chela of Kishan Dass also filed civil suit No.66-C of 2007 for permanent injunction against same set of defendants namely Jagdish Chander, Inder Singh, Mange Ram, Jagdish, Bhim Singh, Satbir, Jiya Lal and Balbir Singh. The said suit was also decreed and the defendants were restrained from interfering in the possession of the plaintiff in the said suit vide judgment and decree dated 30.04.2014 passed by Civil Judge (Sr. Divn.) Hisar.

[5]. Mandir Shree Hanuman Ji Maharaj through its Mahant Rishi Puri along with Satbir and Bhim Singh filed the present suit for declaration to the effect that plaintiff No.1 is owner in possession of the suit land.

[6]. In this suit an application for amendment has been filed to the effect that defendants were encouraged by the aforesaid judgment and decrees passed in the suits for permanent injunction in their favour and have forcibly occupied the land on 09.05.2014 and, therefore, by way of amendment plaintiff

sought relief of possession of the suit land and temporary right to manage the land of the Mandir after taking possession being worshippers and disciples of the Mandir. Pleadings in terms of prayer for possession of the suit land was sought to be added.

[7]. The application has been contested by the defendants. It has been claimed that plaintiffs have availed many opportunities to lead evidence and last opportunity was granted to them to lead evidence. Defendants raised plea of title on the strength of registered document besides raising plea of non-maintainability of the suit.

[8]. It has been alleged that plaintiffs were not in possession of the suit land at the time of filing of the suit, no alleged Committee was constituted by the Gram Panchayat for supervising the affairs of the Mandir and land attached to it. Mutation No.1813 dated 28.04.1952 was entered and sanctioned by the revenue officials in respect of succession of Mahant Chetan Dass and said mutation was confirmed by the Court of Commissioner Ambala Division, Ambala.

[9]. Earlier suits for permanent injunction were decreed and plaintiff No.1 was never proved to be in cultivating possession. Plaintiffs No.2 and 3 were parties to the earlier litigation.

[10]. Trial Court took cognizance on the pleadings of the plaintiffs in application for amendment of the plaint and

presumed the plaintiffs to be in possession of the suit property and that they were dispossessed on 09.05.2014, consequently allowed the amendment on the ground that possession has been illegally taken during pendency of the suit. Therefore, the suit becomes only a simpliciter suit for declaration as relief of possession not included therein, therefore, relying upon the observations made in **Taranjit Kaur and others vs. Navneet Kaur and Ors., 2006 (2) HRP** allowed the amendment by observing that the relief of possession has to be added as simpliciter suit for declaration would be not maintainable and the party is required to be given an opportunity to amend the pleadings suitably. The amendment was allowed vide the impugned order dated 05.07.2014.

[11]. 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.

[12]. 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.**

[13]. 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.

[14]. 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.**

[15]. The amendment has been sought at a belated stage. In view of statement of plaintiff No.3 while appearing as PW-8 in the suit, the plea on the basis of amendment that the plaintiffs were dispossessed on 09.5.2014 is proved to be false. Plaintiff No.3 while appearing as PW-8 has admitted in his cross-examination in the following manner:-

“YE THIK HAI KI 09.05.2014 SE PEHLE VADIGAN SE KABHI BHI ARAJIMUTNAJA KO KABHI KAST NA KIYA. YE BHI THIK HAI KI 09.05.2014 KE BAD BHI VADIGAN NE KABHI BHI ARAJIMUTNAJA KO KAST NA KIYA.”

[16]. In view of aforesaid admission of fact made by the plaintiff No.3, the plea on the basis of which the amendment is being sought is proved to be false plea. Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit** (supra) held that if the statement of fact is *prima facie* proved to be incorrect, amendment cannot be allowed.

[17]. Apparently the statement is *prima facie* proved to be false in view of statement made by PW-8 in his cross-examination, therefore, the entire case of the plaintiffs for seeking amendment in the plaint is based on concoction and

falsehood. The person who has not come to the Court with clean hands can be thrown out at any stage of litigation. Fraud vitiates all solemn acts.

[18]. The precedents cited by the plaintiffs/respondents in order to assert that simpliciter suit for declaration would not be maintainable in the event of alleged dispossession of the plaintiffs on 09.05.2014 seems to be a plea taken in order to fill the lacunae in the case.

[19]. In consideration opinion of this Court, the amendment has been allowed after the commencement of the trial and the ingredients of due diligence has not been fulfilled. The amendment as ordered by the trial Court would amount to material prejudice to the defendants and is result of misuse of process of the Court.

[20]. Having considered the facts of the present case, I am of the view that amendment cannot be allowed, in view of facts and circumstances of the case, resultantly impugned order dated 05.07.2014 passed by Civil Judge (Jr. Divn.) Hisar is set aside. Revision petition is allowed, dismissing the application under Order 6 Rule 17 CPC.

December 24, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**