

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 509 of 2014 (O&M).
Date of Decision : 20.04.2015.

Sardar Singh ...Petitioner

Versus

Surender Singh and others ...Respondents

II. Civil Revision No. 1862 of 2014.
Date of Decision : 20.04.2015.

Chhote Lal ...Petitioner

Versus

Surender Singh and others ...Respondents

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

Present: Mr. P.R. Yadav, Advocate for the petitioner
(in CR No. 509 of 2014)

Mr. Arvind Kumar Yadav, Advocate for the petitioner
(in CR No. 1862 of 2014)

Mr. Mukesh Yadav, Advocate for respondent No. 1.

Mr. Arvind Kumar Yadav, Advocate
for respondent No. 2 (in CR No. 509 of 2014.)

K. Kannan, J.

The revision petitions are against the order dated 19.12.2013 (Annexure P-3) dismissing an application brought by the defendant for amendment of the written statement after commencement of trial. The suit is filed by son of the plaintiff impugning the sale effected by the father/defendant No. 1 on a plea that the property has been sold for several lacs and the consideration has been realised and deposited in certain bank accounts with the specific numbers of the accounts. The written

statement has been filed by the father contending that the plaintiff knew about the sale and denying also that the amounts were deposited in the particular accounts referred to in the plaint.

After the conclusion of evidence of the plaintiff and before the defendant's evidence began, the defendant has sought to bring an amendment to contend that the plaintiff pressurized the defendant to sell since he wanted some money for himself and, therefore, after the property was sold, the consideration was realised and handed over to the plaintiff. The defendant contended that this was merely clarificatory in nature. The application for amendment was rejected by the court below.

It is very well understood that the Courts shall be liberal in considering pleas for amendment of a written statement than what is possible for amendment of the plaint. This is on consideration that defendant has some privileges which a plaintiff does not have that includes the plea that is inconsistent with an earlier version is possible for a defendant. The issue is not merely whether an inconsistent or alternate pleading is possible. The Court shall still examine the plea in the context of the amendment that has been brought about under Order 6 Rule 17 the Act 46 of 1999.

If the defendant has previously contended that the sale was made to the knowledge of the plaintiff and he now wants to make a plea that it was not merely with the knowledge of the plaintiff but it was due to the plaintiff's compulsion, then he must be seen as bringing a new defence. Again, if the earlier version was that he had not deposited the sale consideration in bank

accounts specified by the plaintiff and now he is trying to contend that the sale consideration was made over to the plaintiff himself he is adding a new justification, which he ought to have known if such contentions were to be true. If the plaintiff has been examined, one more important aspect is that all the necessary facts relied on by the defendant were to be confronted to the party, so that there is no surprise of the trial. This practice has been held in ***A.E.G. Carapiet Versus A.Y. Derderian-AIR 1961 Calcutta 359*** which has been referred to and approved by the Supreme Court in ***M.B. Ramesh (D) by Lrs. Vs. K.M. Veeraje Urs. (D) by Lrs. and others, 2013(2) RCR(Civil) 932*** where they observed that where ever the opponent has declined to avail himself of the opportunity to put his essentials and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is a rule of essential justice at the trial. If the defendant, therefore, had not even support to the plaintiff in cross-examination that consideration realised over ₹30 lacs was handed over to the plaintiff after the sale, he cannot be permitted to bring a new plea which must only be taken as bringing a great surprise of the trial.

The amendment that was brought in the year 1999 and 2002, amidst lot of resistance from several quarters including the bar was to ensure the progress of trial without stultifying a quick disposal. Even while an inconsistent pleas could be brought, it should still stand the test of amended provisions of Order 6 Rule 17 CPC that a person shall not be permitted to amend this pleading after commencement of trial, if an aspect which is

sought to be pleaded later was within the knowledge of the party and which, if due diligence had been applied, he ought to have set it forth in the original statement itself. The defendants who claimed that the sale was done with the consent of the plaintiff could not have omitted to make an important statement that it was not merely a consent but it was compulsion; that it was not merely a case of deposit of sale consideration in bank but it was actually a case of handing over a consideration of more than 30 lacs to the plaintiff himself. The defendant was literally trying to bring a cock and bull story through an amendment and rightfully rejected by the Court below. I find no scope for intervention. Revision petitions are dismissed.

April 20, 2015.
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(K. KANNAN)
JUDGE