

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.6588 of 2013 (O&M)

Date of decision: 10.07.2015

Suraj Kore

.... Petitioner

versus

Singaro and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.S.Rana, Advocate,
for the petitioner.

Mr. Salil Bali, Advocate,
for the respondents.

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

K.Kannan, J. (Oral)

1. The revision petition is against the order allowing an application for amendment of the written statement filed by the defendant. The suit is filed for declaration and for injunction in relation to the suit property claiming to be the property of Bihari Lal and the plaintiff claimed the same to have been conveyed to him through a document dated 14.03.1983 styled as a lease for a period of 99 years for a consideration of ₹5,000/- stated in the document.

The plaintiff's contention is that it was indeed a sale though termed

as a lease. It would appear that Bihari Lal himself assailed the transaction during his lifetime by a suit contending that the document had been brought about by fraud and collusion but the suit was dismissed for default and there was no restoration during his lifetime. After his life, the daughters, who were the defendants, filed a suit claiming the property as belonging to them by right of preemption and the transaction of alienation made in favour of the plaintiff as not valid. After several rounds of litigation upto High Court at two different occasions after remand, the defendant's suit claiming preemption was dismissed holding, inter alia, that the lease was indeed a sale and that further the basis of the claim itself did not any longer exist since the law of preemption had undergone a change and it made reference to the decision of the Supreme Court in **Atam Parkash Versus State of Haryana-AIR 1986 (SC) 859** to hold that the claim by the defendants as daughters of Bihari Lal was not competent. That decision has become final between parties. The present suit is filed by the plaintiff for declaration and injunction again making reference to the fact that the revenue records still retain the name of Bihari Lal and that the defendants are taking advantage of the same and trying to create further alienation of the property as the cause of action for a threatened disposition by the defendants and persons claiming under them.

2. The suit has been filed on 31.05.2007 and statement has been made on 01.10.2007. In the written statement, the defendant would meet the averment in the plaint in para 1 to the following effect:-

“1- Para No.1 of the plaint is correct to the extent that late Bihari Lal predecessor in interest of the defendants is the owner in possession of the agricultural land as described in this para and said late Bihari Lal was the exclusive owner in possession of the suit land. The contents of the rest of the para is wrong and denied. It is upto the plaintiff to prove the averments of this para as alleged in this para.”

The plaintiff's side was closed and at the stage of the defendant's evidence, an application was filed for amendment of the written statement to contend that the property did not belong to Bihari Lal and that the so-called sale executed styled as lease is not valid. The court has allowed the application and the aggrieved plaintiff is before this court.

3. I have no doubt in my mind that the order of the court below is untenable. The precept in law is that the courts shall be liberal in allowing for amendment to a written statement and the normal parameters that are applicable for amendment of pleadings of plaintiff to prevent inconsistent pleas shall not be applicable for

defendant. Beyond this difference, every other aspect regarding amendment must be always considered by the court to see whether there is any prejudice or not to the opposite party or not. We have come by a new dispensation after the amendment to the Civil Procedure Code under Order 6 Rule 17 by Act 46 of 1999 that prohibits any application for amendment after the commencement of trial and the exception granted is such amendment on fact which was not in spite of exercise of due diligence, the party did not know. There is nothing which the defendant-party did not know about this case, for, they have been engaging themselves in litigation for the last 3 decades. Ever since the ink in the document dated 14.03.1983 dried up, Bihari Lal fought a litigation, grew limp and gave up. The defendants would not take lesson, they have had two rounds of litigation upto High Court. They were defeated by their own pleadings and by legal bar by virtue of change in law of pre-emption. If the plaintiff was still feeling the heat and had to file suit to protect his possession, the defendants who have still some claims in the property which they believe are tenable, had filed the statement and after nearly 7 years would come up with an application denying that Bihari Lal was even the owner of the property which was conveyed to the plaintiff, I would find the application to be untenable not merely because that it is opposed to the new dispensation under Order 6 Rule 17 CPC but also violates

the fundamental premise that the party will not withdraw an admission of what is already made through the pleadings. The counsel would like to argue that what is contained in the original statement ought not to be taken as admitting Bihari Lal's right to the property. I have extracted the words and the language again conveys nothing different from what I believe to be a clear admission. The defendant is bound to proceed with the trial with the pleadings already had. He cannot amend the statement after the closure of the plaintiff's evidence, for, it will create yet another obstruction to the course of trial. It has been laid down by the Supreme Court in **M.B. Ramesh (D) by LRs Versus K.M. Veeraje Urs. (D) by LRs and another-2013(2) RCR (Civil) 932** making specific reference to the ruling of the Division Bench of the Calcutta High Court in **A.E.G. Carapiet Versus A.Y. Derderian-AIR 1961 Calcutta 359** that it is essential that a party is confronted in the cross-examination of every aspect of what the adversary is pleading for. This is observed by the Supreme Court as an essential rule of justice, for, there can be surprise at the trial if the defendant would bring his own evidence inconsistent with the line of cross-examination which he has adopted to the plaintiffs. If the plaintiff has already been cross-examined on the pleadings of the defendant as it existed, the defendant cannot now be allowed to bring the pleadings inconsistent with the contention already made. This amendment is, therefore, bound to

bring a surprise at the trial which the plaintiff cannot be confronted with.

4. The petition for amendment was untenable and it ought to have been rejected. I set aside the order and allow the civil revision with costs assessed at ₹ 3,500/- against the respondents.

(K.KANNAN)
JUDGE

10.07.2015
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