

CR No.7004 of 2011 (O&M)

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

**CR No.7004 of 2011 (O&M)
Date of decision:23.02.2015**

Nand Singh and others

...Petitioners

Versus

Chand Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.S.Salar, Advocate,
for the petitioners.

Mr. P.K.Gupta, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

In this revision petition, the defendants-petitioners have challenged the order dated 18.10.2011, allowing the application of the plaintiff for amendment of the plaint.

In brief, the plaintiff-respondent no.1 filed the suit for declaration that he is joint owner in possession to the extent of 1/4th share in the land in dispute. When the case was fixed for plaintiff's evidence, he filed an application for amendment of the plaint to make the following averments:-

- “i) That in the head note & prayer of the plaint by adding that - “the judgment and decree dt. 03.02.1983 obtained from Babu Singh and uncle

Chet Ram by filing suit no.1437 on the basis of false revenue entry of mutation no.1688 is collusive, illegal, null & void, result of fraud and has not effect upon the rights of plaintiff regarding jointness of the property mentioned in that judgment and decree.

- ii) That similarly in the plaint now as Para no.3- That on the filing of petition for partition of the land by Phagan Singh, defendant no.6 now, the partition deed dt. 19.08.1982 was reduced according to which mutation no.1688 dt. 10.11.1982 of village was sanctioned as referred in the revenue record, which was subsequently challenged with filing of Civil SuitNo.7 of 8.1.1984 titled as “Phagan Singh vs. Chet Ram & others”. Said document of partition is neither admissible nor create any right, title and interest in immovable property being require compulsory registration. Further more, if partition had taken place according to that document what was necessity for writing subsequently in the year of 1999 for alleged partition. Chet Ram and Babu Singh did not contest that claim, however, father of plaintiff Sh. Jangir Singh pleaded the suit property as joint and

co-ownership. Said case was decreed by the Court of Sh. Chanan Singh, PCS, Sub Judge 1st Class, Nabha on 14.08.1985.

- iii) Para no.4 as – That knowing well that the property is still joint, the defendants no.1 to 4 succeeded to suffer a collusive decree from their father Babu Singh and uncle Chet Ram by filing civil suit no.1437 on the basis of the false revenue entry of mutation no.1688 which was subsequently declared as illegal, null and void, by obtaining decree on 03.02.1983.
- iv) Para no.5 as – That thereafter Phagan Singh, (defendant no.6) as co-sharer filed a petition in May 31, 2002 for partition u/s 111 of Punjab Land Revenue Act before the Court of Asstt. Collector 1st Grade, Nabha where in the deed of compromise was reduced into writing and the signatures of plaintiff were obtained with misrepresentation and false inducement that he has to sign it merely as attesting witness.
- v) Para no.6 as – That since the dictum of Civil Court was not incorporated in the revenue record and the same remain continued being so by getting the benefit of wrong revenue entries, the defendants

misused them for the purposes of achieving their ill motives and to obtain their hidden agenda. In these circumstances, the revenue entries showing separation of land instead of its jointress is illegal, null and void, hence, required to be corrected.”

The trial Court allowed the application on the ground that even if the amendment sought is belated but if it is necessary for resolving the real controversy between the parties, it can be allowed and the opposite party can be compensated with costs.

In the original plaint, it was averred that the entries showing the partition of the joint land are wrong and with the amendment, challenge has also been laid that the judgment and decree dated 03.02.1983 passed in Civil Suit No.1437 is also illegal.

Counsel for the petitioners has argued that the amendment has been sought at a belated stage when the evidence of the plaintiff was going on though the plaintiff had knowledge of the alleged collusive judgment dated 03.02.1983 and the compromise deed dated 11.03.1999 earlier also, therefore, it is submitted that the impugned order is patently erroneous.

On the other hand, counsel for the respondents has submitted that the dispute is between the real brothers and their family members in respect of their shares; the amendment sought would bury the hatchet once for all and has been rightly allowed by the trial Court. In support of his submission, he has relied upon a decision of the Supreme Court in the case of **Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd. and others,**

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2012(2) Civil Court Cases 293 (S.C.).

I have learned counsel for the parties and examined the available record.

The Supreme Court, in **Rameshkumar Agarwal's case (supra)**, has observed as under:-

“10. In **Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.**, (2009) 10 SCC 84, this Court once again considered the scope of amendment of pleadings. In paragraph 63, it concluded as follows:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

11. It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule

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particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

In the present case, the suit is still at the stage of plaintiff's evidence. Though as per proviso, the trial has begun but the amendment sought would not change the nature of the suit rather it would help the Court to arrive at a just conclusion as to whether the property in dispute is still joint or has already been partitioned.

In view thereof, I do not find any error in the impugned order and hence, the present revision petition is hereby dismissed being denuded of any merit.

February 23, 2015
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(Rakesh Kumar Jain)
Judge