

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

**Civil Revision No. 6612 of 2014 (O&M)**

Date of decision : 29.4.2015

Sharwan Kumar Mittal

.. Petitioner

versus

Smt. Vibha Goel and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal**

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

Mr. Tribhawan Singla, Advocate, for respondent nos. 1 and 2.

**Rajesh Bindal, J.**

1. The plaintiff is before this Court impugning the order dated 4.9.2014 passed by the learned Court below, whereby the application filed for amendment of the plaint was dismissed.

2. The proceedings arise out of a suit filed by the plaintiff for specific performance of agreement to sell dated 12.8.2009. It is claimed that the suit was filed by the plaintiff as talks of compromise failed.

3. Learned counsel for the petitioner-vendee submitted that respondent nos. 1 and 2/ vendors agreed to sell House No. 1240, Urban Estate, Jind, vide agreement dated 12.8.2009 to the petitioner-vendee for a total sale consideration of ₹ 50,25,000/-. Earnest money of ₹ 2,00,000/- was paid. Sale deed was to be executed on or before 1.12.2009. The vendors having not got the sale-deed executed on or before the date fixed, the suit for possession by way of specific performance of agreement to sell was filed on 1.11.2010. During the pendency of the suit, an application for amendment of the plaint was filed seeking to challenge the communication dated 28.12.2009 addressed by the vendors to the vendee cancelling the agreement. It was required on account of judgment of Hon'ble the Supreme

Court in I. S. Sikandar (D) By LRs. Vs K. Subramani and others 2014 (1) RCR (Civil) 236. The amendment has been sought only in the title and prayer clause of the plaint. No evidence is to be led as the entire evidence is already on record. It was further submitted that nature and cause of action of the suit will not change as the ultimate relief is possession by way of specific performance of agreement to sell. The amendment was necessitated only because of judgment of Hon'ble the Supreme Court. It is not a case of lack of due diligence as the judgment of Hon'ble the Supreme Court came very recently. The power to allow amendment at any stage is quite wide. In support of the arguments, reliance was placed upon judgments of Hon'ble the Supreme Court in Puran Ram vs Bhaguram and another AIR 2008 SC 1960, Prithi Pal Singh and another vs Amrik Singh and others 2014 (1) RCR (Civil) 327, Abdul Rehman and another vs Mohd. Ruldu and others 2012 (4) RCR (Civil) 481, and judgment of Andhra Pradesh High Court in Institute of Education, Ramachandrapuram, rep. by its President Smt. V. Ganga Bhavani vs Ramachandrapuram Municipality, rep. by its Commissioner and another 2014 (3) Civil Court Cases 538. It was further submitted that after the amendment is allowed, the same relates back to the date of filing of the suit.

4. On the other hand, learned counsel for respondent nos. 1 and 2 submitted that letter dated 28.12.2009 terminating the agreement to sell was well within the knowledge of the petitioner. The same was not challenged at the time of filing of the suit. At this stage amendment cannot be permitted to challenge the letter dated 28.12.2009, as a fresh suit to challenge the same would be time barred. By way of amendment, the time barred claim cannot be permitted to be added. The amendment is sought only in the title and the prayer clause. There is no pleadings in the suit with reference to the same, and without that, the amendment is irrelevant, as the petitioner has not pleaded in the plaint that the letter cancelling the agreement is bad for any reason. Judgment of Hon'ble the Supreme Court in I. S. Sikandar's case (supra), does not give a fresh cause of action. It only declares a law. In fact there was no change in law. The trial has already concluded. At the fag end, amendment in the plaint should not be allowed. In support of the plea, reliance was placed upon judgment of Hon'ble the Supreme Court in

Rajkumar Gurawara (dead) through LRs vs M/s S. K. Sarwagi and Company Private Limited and another 2008 (4) RCR (Civil) 824, Rameshkumar Agarwal vs Rajmala Exports Private Limited and others 2012 (2) RCR (Civil) 739, Shiv Gopal Sah @ Shiv Gopal Sahu vs Sita Ram Saraugi and others 2007 (2) RCR (Civil) 679.

5. Heard learned counsel for the parties and perused the paper book.

6. In the case in hand, the suit was filed by the petitioner on 1.11.2010 for specific performance of agreement to sell dated 12.8.2009. When the same was at the fag end, application for amendment was filed seeking to challenge the letter dated 28.12.2009 vide which the vendors had cancelled the agreement to sell. The same was prior to the filing of the suit. The stand of the petitioner is that the amendment was necessitated as Hon'ble the Supreme Court in I. S. Sikandar's case (supra), opined that in case there is cancellation of agreement to sell, suit for specific performance on the basis of that agreement to sell cannot be decreed unless the cancellation is also challenged. It was argued by learned counsel for the petitioner that power of the Court to allow the amendment in the plaint is quite wide. The object is to minimize the litigation. The amendments are allowed even at the appellate stage. In the case in hand, as the evidence has already been led, the petitioner is not even seeking to lead any evidence. There is no lack of due diligence.

7. Whereas on the other hand, the stand of respondent nos. 1 and 2 is that when the claim, which is sought to be incorporated, is barred by limitation, the amendment in the plaint cannot be allowed. A separate suit to challenge the letter dated 28.12.2009, vide which the agreement to sell was cancelled, was time barred on the date when the application for amendment was filed. Hence, the same has rightly been declined.

8. In Puran Ram's case (supra), while considering the issue Hon'ble the Supreme Court opined that there is no absolute rule that amendment can be refused if the relief claimed by way of amendment is time barred. It depends on the facts and circumstances of each case and discretion has to be exercised on a judicial evaluation thereof.

9. In Prithi Pal Singh's case (supra), Hon'ble the Supreme Court summed up following conclusions pertaining to amendment of pleadings from earlier judgment of Hon'ble the Supreme Court in Sampath Kumar vs Ayyakannu and another 2002 (4) R.C.R. (Civil) 566:-

“10. In the case of ***Sampath Kumar v. Ayyakannu and Anr., 2002(4) R.C.R.(Civil) 566 : 2002 (3) Civil Court Cases 364 (S.C.)*** initially, a suit for prohibitory injunction was filed in the year 1988 claiming possession of the suit property. Later in the year 1989, an application under Order 6 Rule 17 Civil Procedure Code was made for conversion of the suit into one for declaration of title of the suit property and consequential relief of delivery of possession alleging that during the pendency of the suit, defendant dispossessed the plaintiff in January 1989. The amendment was refused. However, in appeal before the Hon'ble Apex Court, the conditional amendment was allowed. The Hon'ble Apex Court observed as under :

"11. In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the

averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

xxx xxx xxx xxx

13. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed."

11. From the ratio of the aforesaid judgments, following points emerge :

(a) Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;

(b) The dominant purpose of the amendment is to minimize the litigation;

(c) The amendment once allowed and incorporated relates back to the date of the initial institution of the suit;

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed. (emphasis supplied”

10. In Abdul Rehman's case (supra), Hon'ble the Supreme Court opined that the Courts have to be liberal in accepting the prayer for amendment of pleadings if the same is made prior to commencement of trial. If application is made after the commencement of trial, the Court has to arrive at a conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. The main purpose for allowing the amendment is to minimize the litigation. The plea regarding relief sought to be incorporated by way of amendment being time barred is also to be considered in the facts and circumstances of each case. If the necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the basis of the suit.

11. In the case in hand, the petitioner has already filed a suit for possession by way of specific performance of agreement to sell dated 12.8.2009. The only amendment sought in the plaint is to challenge the cancellation of the agreement to sell. In substance the relief remains the same. Challenge to cancellation of agreement to sell is ancillary with main relief. The amendment was necessitated in view of the law laid down by Hon'ble the Supreme Court in I. S. Sikandar's case (supra) that such a challenge is mandatory. The substance of the prayer made in the suit is not changed.

12. Andhra Pradesh High Court in Institute of Education, Ramachandrapuram' s case (supra), set aside the order passed by the Court below refusing to allow the amendment of pleadings on the ground that the relief sought to be claimed by way of amendment was time barred. The view was expressed considering the fact that the amendment was necessitated on account of later judgment of Full Bench of the Court which opined that a

simpliciter suit for injunction was not maintainable without seeking a declaration that demand notice issued by the Municipality was illegal. The petitioner therein had filed a suit only for injunction. The amendment was sought to seek the relief of declaration that the demand notice issued by the Municipality was illegal. It was further opined that the proposed amendment neither introduced fundamental or constitutional change in the nature and character of the suit nor the frame thereof. The plaintiff therein was not held to be at fault. It was not a case of lack of due diligence. The relevant paragraph thereof is extracted below:-

“6. Reverting to the instant case facts, what is to be noted is that the plaintiff filed a suit in the year 2003 for perpetual injunction to restrain the 1st defendant/ Municipality from collecting in any manner whatsoever, any tax as levied and demanded from the plaintiff; but in the suit, the plaintiff did not challenge the levy and demand notices by seeking a declaratory relief as by then, in the absence of the decision of the Full Bench of this court, the plaintiff was of the view that the levy and demand of taxes by the Municipality from an institution like the plaintiff is nonest and, therefore, such levy and demand notices need not be challenged by seeking a declaration. However, during the pendency of the suit before the trial Court, a Full Bench of this Court had rendered the judgment in ***Kakinada Education Society, Kakinada v. Kakinada Municipal Corporation*** (supra) and the trial Court by following the precedential guidance in the said Full Bench decision of this Court had dismissed the suit of the plaintiff inter alia recording a finding that a simple suit for injunction is not maintainable without seeking a declaration that the demand notices issued by the defendant Municipality are illegal, arbitrary and not in accordance with law. The unsuccessful plaintiff having filed the first appeal, therefore, sought the amendment of the plaint during the

pendency of the first appeal while maintaining that there is no necessity to seek declaration but the declaration is being sought by way of an amendment for abundant caution in view of the subsequent event, namely, the decision rendered by the Full Bench of this Court. Thus, the case of the plaintiff is that in case the 1st appellate court also comes to the conclusion that the plaintiff is not entitled to the exemption provided under Section 88 of the Act, the plaintiff would be entitled alternatively to contend and succeed by seeking the relief of declaration as sought for in the proposed amendment of the plaint. Nonetheless, the defence of the Municipality is that the amendment sought cannot be permitted at the stage of first appeal and in view of the proviso appended to Order VI Rule 17 of the Code. Notably, the plaintiff is not changing the cause of action; only a broader relief of declaration is being sought by way of proposed amendment in view of a subsequent event, which lead to recording of certain observations in the judgment of the trial court. The proposed amendment, if permitted, neither would introduce a fundamental or constitutional change in the nature and character of the suit nor would change the frame of the suit. Since the amendment was necessitated, according to the plaintiff, on account of a subsequent event, namely, the rendering of a judgment by the Full Bench of this court settling the legal position, the plaintiff cannot be found fault either for not seeking the amendment at the commencement of the trial or for seeking the amendment at the stage of first appeal; and lack of 'due diligence' cannot be attributed to the plaintiff, in the facts and circumstances of the case. Applying the settled legal principles set out supra, this Court finds that this is a case where the jurisdictional fact as envisaged in the proviso appended

to Order VI Rule 17 of the Code exists and, that therefore, this Court could exercise the jurisdiction to allow the amendment. On an earnest consideration of facts and law, it emerges that the amendment sought is imperative for proper and effective adjudication of the suit and that the application for amendment is bonafide and that the refusal of the amendment would lead to injustice and that on the other hand the allowing of the amendment does not cause any prejudice to the defendant/Municipality. Viewed thus, this Court finds that the refusal to permit the amendment by the Court of first appeal, without examining the factual and legal position and on the ground of exorbitant delay, is not just and fair in the facts and circumstances of the case. As a sequel to the detailed discussion coupled with reasons, this Court holds that the application seeking amendment of the plaint deserves to be allowed and that the order impugned, which suffers from factual and legal infirmities, is liable to be set aside.”

13. In the case in hand as well the amendment was necessitated on account of a subsequent judgment of Hon'ble the Supreme Court in I. S. Sikandar's case (supra), wherein it was opined that to seek the relief of possession by way of specific performance of agreement to sell in case there is cancellation of agreement to sell, the same is also required to be challenged.

14. The judgments referred to by learned counsel for respondent nos. 1 and 2 will not be applicable in the facts and circumstances of the case for the reason that the relief by way of amendment sought by the petitioner is so interconnected with the main relief already sought in the suit that independent suit for that purpose will not be maintainable. Hence, delay in filing the application in these circumstances is not fatal for allowing the prayer for amendment of the plaint.

15. For the reasons mentioned above, in my opinion, the impugned order passed by the learned Court below rejecting the prayer for amendment of the plaint cannot stand in judicial scrutiny. The same is set aside. The application for amendment of plaint filed by the petitioner is allowed.

16. The Revision Petition is disposed of accordingly.

29.4.2015

vs

( Rajesh Bindal )  
Judge

(Refer to Reporter)