

CR No. 6797 of 2012 (O&amp;M)

Date of Decision: 06.01.2015

**Kulwinder Singh Dhillon and another**  
V/s.

...Petitioners

**Harmehar Singh and others**

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

Mr. Puneet Gupta, Advocate for the respondents.

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**G.S. SANDHAWALIA, J. (Oral).**

The challenge in the present revision petition by the petitioners/defendants No. 1 and 2 is to the order dated 07.09.2012 passed by the Civil Judge (Senior Division), Patiala whereby the application for amendment of the written statement dated 25.07.2011 (Annexure P-9) has been dismissed. The reasoning given by the trial Court is that the written statement was filed on 22.02.2006 and the issues having been framed on 19.04.2006 and plaintiffs having examined PW-1/Balwinder Singh Bajwa on 29.10.2009 the defendant was well aware of the amendment and regarding the previous litigation and gift deed. The date of compromise effected between the parties in the probate proceedings had not been mentioned and therefore, since the trial had commenced, due diligence aspect was missing.

A perusal of the paper book goes on to show that a suit was filed through the attorney, namely, Balwinder Singh Bajwa of respondents No. 1 and 2, who are sons of respondent/defendant No. 3-Satinder Singh. The challenge was to the gift deeds dated

10/14-11-2000 executed by their grandfather Gurbax Singh in favour of defendant No. 2 who was the daughter-in-law of Gurbax Singh and wife of defendant No. 1. Gurbax Singh is alleged to have expired on 01.01.2002. The plaintiffs, on the basis of birth and alleging the property as ancestral in the hands of late Gurbax Singh had challenged the gift deed. In the written statement filed by defendants No. 1 and 2 it was averred that the suit was collusive between the plaintiffs and defendant No. 3 and that the properties held by Gurbax Singh were not ancestral property. The factum of earlier compromise dated 14.05.2001 was pleaded and that the plaintiffs had also admitted it, apart from another compromise dated 24.05.2001 but the plea was taken that the respondent No. 3 had failed to act by that compromise. It was alleged that Satinder Singh respondent No. 3 had been disowned during the life time of Gurbax Singh and public notice had also been issued on 17.11.2000. It is pertinent to note that the respondents No. 1 and 2 also filed an application for amendment under Order 6 Rule 17 alleging that litigation which is pending between the two brothers, defendants No. 1 and 3 had been compromised by them and the compromise had been submitted in the Court of Mrs. Sukhwinder Kaur, Additional District Judge, Patiala. Copy of the compromise was attached to the application. Accordingly, amendment was sought whereby certain properties were sought to be deleted. The said compromise which had been signed by the brothers defendants No. 1 and 3 is appended as Annexure P-5 before this Court.

Eventually, vide order dated 20.11.2009 (Annexure P-8),

the probate petition filed by defendant No.1 pertaining to the registered Will dated 12.06.2000 executed by Gurbax Singh, was dismissed in view of the statement given by the parties which is Annexure P-7 in which the parties agreed to withdraw all the cases pending in various Courts and reference was given to the proceedings including the suit in question. Thereafter, the present application came to be filed by the petitioners seeking the amendment of the written statement wherein reference of compromise has also been made which was recorded in the probate proceedings and it was accordingly pleaded that plaintiffs could claim from their father Satinder Singh who had been given more than his share. The application was contested by filing reply by the respondents/plaintiffs on the ground that the amendment was within the knowledge of the defendants when they had filed the written statement and that the defendants could not amend the written statement, since the trial had already commenced and that the defendants No. 1 and 2 did not stand by the compromise entered into. Resultantly, the application has been dismissed as noticed above on the ground of lack of due diligence and delay.

Counsel for the respondents submits that the order is not justified and has taken a plea that once trial has commenced then the amendment could not be allowed and places reliance upon ***Vidyabai and others vs. Padmalatha and another, 2009 (2) SCC 409*** and he further submits that there was no due diligence in the application and there was delay.

Counsel for the petitioners, on the other hand, submitted that the compromise was only effected on 20.11.2009 in probate proceedings and being a subsequent event in such circumstances, the amendment should have been allowed.

After hearing counsel for the parties, this Court is of the opinion that trial Court was not justified in declining the amendment. It is settled principle of law that amendment of written statement is more liberal than the amendment of the plaint. Reference can be made to the judgment of the Apex Court in ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others 2009(10) SCC 84.*** The issue of due diligence does not arise in the present case as admittedly compromise was effected in probate proceedings, and was a subsequent event having taken place on 20.09.2009 after filing of the written statement in February 2006. The amendment would only help the trial Court to adjudicate upon the issues and share of the parties as the dispute pertains to the estate of Gubrax Singh, who is the grandfather of the plaintiffs/respondents No. 1 and 2 whereas the petitioners herein are the son and daughter-in-law. The gift deeds are subject matter of issues and various compromises pertaining to the year 2001 are also the subject matter and thereafter also certain compromises inter se had taken place.

Therefore for the just decision of the case, keeping in view the above facts so that the share of the parties can be adjudicated upon, the trial Court was, thus, remiss in declining the amendment. Even if it

was a subsequent event which had taken place and even if the respondents No. 1 and 2 were not party to the probate proceedings, admittedly, the attorney of the father of respondents No. 1 and 2 had given a statement that the suit would also be compromised. It is settled principle of law that while considering the amendment merits need not be gone into and it is only to be seen that the dispute could finally be effectively resolved by the Court. In such circumstances, the present revision petition is accordingly allowed. The order dated 07.09.2012 is quashed and the application of amendment of the written statement of defendants No. 1 and 2 is allowed subject to payment of ₹22,000/- as litigation expenses to the opposite party i.e. the plaintiff which were directed to be deposited with this Court subject to the final outcome of the revision petition vide order dated 16.11.2012. However, nothing said herein shall prejudice the trial Court while taking a decision on merits of the case.

**January 06, 2015**

Divyanshi

**(G.S. SANDHAWALIA)  
JUDGE**