

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7052 of 2013.

Decided on:-February 11, 2015.

Rajbir Singh and othersPetitioners.

Versus

Tejinder Singh and othersRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. R.D. Bawa, Advocate
for the petitioners.

Respondents No.1 to 5 ex-parte vide order dated 4.2.2015.

Respondent No.6 ex-parte vide order dated 10.11.2014.

Dr. Bharat Bhushan Parsoon, J.

Order dated 12.7.2013 (Annexure P-7) vide which application under Order VI Rule 17 read with Section 151 CPC for amendment of the written statement of the defendants, respondents herein, was allowed by the lower court, forms genesis of the present revision petition.

2. Respondent No.6 was proceeded against ex-parte on 10.11.2014 and on the date of hearing of arguments on 4.2.2015, neither respondents No.1 to 5 nor their counsel appeared despite several pass overs. They were thus also proceeded against ex-parte.

3. The plaintiffs, petitioners herein, are aggrieved of this order

claiming that the amendment allowed in the written statement takes away the admission made by the defendants in their pleadings and thus, changes not only the contours of the litigation but even sum and substance thereof. Prayer for reversal of the impugned order and acceptance of the revision petition has been made.

4. Citing ***Vidyabai and others Versus Padmalatha and another 2009(1) RCR (Civil) 763 (SC)***, counsel for the petitioners-plaintiffs has urged that the court has no jurisdiction to allow amendment of pleadings after commencement of the trial. It is claimed that when the plaintiffs started leading evidence, the trial is deemed to have started. This judgment was cited even before the trial court. Relying upon ***S. Malla Reddy Versus M/s Future Builders Co-operative Housing Society and others 2013(2) RCR (Civil) 957 (SC)***, it is further urged that the defendants cannot be allowed to withdraw the admission made by them in their written statement taking recourse to Order VIII Rule 9 or Order VI Rule 16 or Order VI Rule 17 of CPC. In the cited authority, unlike in the impugned order, the trial court discussing all the facts and circumstances of the case had not permitted the defendants to substitute the written statement wherein earlier, there was an admission of the claim of the plaintiff-society in the suit. Para 24 of this judgment being relevant for ready reference is reproduced as below:

“24. Although the defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim

of the plaintiff-Society (respondent herein). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in the written statement and finally came to the conclusion that the defendant-appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.”

5. At this stage, a re-look on the written statement in the interface of plaint is necessary. Before taking up this venture, it would be appropriate to understand the facts and circumstances of the case. A suit for permanent injunction for restraining the defendants from illegally and forcibly interfering in the possession of the plaintiffs who claim themselves to be owners of the land, is pending adjudication before the lower court. Para No.3 of the plaint for ready reference is reproduced as below:

“3. That the defendants have got absolutely no right, title or interest whatsoever with the suit land or any portion thereon.”

6. In reply to the averments contained in para No.3 of the plaint, defendants No.1 to 5 in their joint written statement, had furnished reply to these averments as under:

“That para No.3 of the plaint is correct.”

7. By way of application under Order VI Rule 17 read with Section 151 CPC for amendment of the written statement, now para No.3 is sought to be completely changed. For ready reference, para No.3 which is now sought to be substituted in para No.3 of the earlier written statement, is as under:

“That para No.3 of the plaint is wrong and is denied. It is a big joint Khata of land measuring 272 Kanals 9 Marlas and the plaintiff is merely a vendee of joint Khata as per revenue record. The answering defendants are the original co-sharers of said joint Khata, otherwise. Moreover the water is necessity for irrigation of the land and utilization of the land and the Khal is only source to give water to each and every portion of the land of joint Khata and the co-sharers are entitled to pass the water through the Khal from the land which is part of and parcel of the joint Khata and benefit of other land of joint Khata as rights of easement of necessity.”

8. Co-joint reading of the earlier pleadings of the parties and averments of the application for amendment of the written statement, reveal that entirely a new case is tried to be set up by withdrawal of the earlier admission made by the defendants. It is important to notice here that absolutely no reason has been given or circumstances have been detailed for withdrawing such admission by the defendants. Unless and until such circumstances to the satisfaction of the court are brought on record to show that admission made by the defendants was erroneous, the same cannot be withdrawn in view of the judgment referred to above as ***S. Malla Reddy Versus M/s Future Builders Co-operative Housing Society and others 2013(2) RCR (Civil) 957 (SC)***.

9. No doubt, amendment of the written statement as compared to that of the plaint is taken differently and more liberally but the defendants cannot be allowed to completely and absolutely change their pleas already taken in the written statement by substituting completely a new written

statement in its place.

10. In fact, what is sought by the defendants to be done away by way of amendment in the written statement is complete withdrawal of the earlier statement and substitution of the same with the new one without any explanation or spelling out reasons or by offering any justification that earlier admission was erroneously introduced and was required to be withdrawn by substituting it with real and correct plea of the defendants.

11. Viewed from another angle, there is proviso to Rule 17 of Order VI CPC which also comes as an impediment in the way of the defendants seeking amendment in the written statement. For ready reference, Order VI Rule 17 CPC with proviso is reproduced as below:

“17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”
(underlying added for supplying emphasis)

12. It is important to note here that issues had already been framed on 1.12.2011 and the plaintiffs-petitioners have already led some evidence and are in the process of leading further evidence. Jimni order of 27.4.2012 which has been reproduced in the paper book, supports this stand.

13. Keeping in view the totality of facts and circumstances, the application of the defendants for amendment of the written statement which was projected to be innocuous, in fact, is mischievous one and the same

entirely changes the colour and shade of the stand of the defendants and consequently, the entire dispute to be adjudicated changes its sum and substance.

14. Looking from yet another angle, if a question is posed as to whether the amendment sought for is necessary for adjudication of the matter in controversy as originally was projected by the parties, a clear answer is 'no'. By seeking amendment of the written statement, the defendants are completely changing their earlier stand and are coming up with a new plea springing a surprise to the plaintiffs as also to the court.

15. Viewed from any angle, the impugned order does not stand factual and legal scrutiny. Sequelly, accepting this revision petition and reversing the impugned order, the application for amendment of the written statement filed by the defendants before the lower court is dismissed.

February 11, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes