

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **CR No. 7584 of 2011 (O&M)**
Date of Decision : 16.03.2015

CharkarwartiPetitioner

Versus

Gurprit Singh and others ...Respondents

2. **CR No. 7586 of 2011 (O&M)**

KrishanPetitioner

Versus

Varinder Pritam Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Mr. Suvineet Sharma, Advocate
for the petitioner.

Mr. Suresh Monga, Advocate
for respondents no. 11 and 12.

R.P. Nagrath, J.

By this common order **CR No. 7584 of 2011** and **CR No. 7586 of 2011** are being disposed of as similar questions are involved in these revisions. The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India for seeking to set aside the order dated 17.11.2011 (Annexure P-6) passed by the trial Court whereby application under Section 151 of the Code of Civil Procedure (CPC) for carrying out certain changes in the plaint for describing the detailed

particulars of the land, has been declined.

2. Petitioner in CR No. 7584 of 2011, is the grandson and petitioner Kishan in CR No. 7586 of 2011 the son of Giani Ram. The facts are being extracted from CR No. 7584 of 2011.

3. The suit was initially instituted on 01.04.2005, with a prayer for restoration of possession in respect of 49/487 share from defendants no. 1 and 2 and 904/4511 share from defendants no. 3 to 6 in the land fully described in the head-note of the plaint. Before framing of the issues an application for amendment of the plaint was filed on 14.07.2009 seeking to incorporate subsequent event of sale of 22 *kanal* 4 *marlas* of land by defendant no. 2 vide sale deed dated 31.05.2005 and defendants no. 3 to 6 having sold 110 *kanals* 5 *marlas* of land by including the suit land vide sale deed dated 26.04.2005, in favour of Katar Singh son of Baja Ram respondent no. 12, who was impleaded as defendant on an application made under Order I Rule 10 CPC. Defendants no. 7 and 8 were also impleaded as parties on their filing an application under Order I Rule 10 of the Code. Katar Singh son of Baja Ram on appearance in the Court disclosed that he had sold the land in favour of defendants no. 9 and 10. That application of the plaintiff was allowed on 07.03.2008, by the trial Court. The added defendants are respondents no. 9 to 12 but the instant petition is being contested by respondents no. 11 and 12, who are defendants no. 9 and 10 before the trial Court.

4. The petitioner-plaintiff closed his evidence on

18.03.2011 and while the case was fixed for evidence of the defendants that the present application was filed for seeking amendment of the plaint on 13.05.2011. The trial Court allowed the application partly and during pendency of the instant petition, the evidence of the defendants has also been concluded.

5. In the application presently under consideration filed under Section 151 CPC, there are twofold submissions: (i) that Katar Singh son of Baja Ram aforesaid could not be mentioned as a necessary party in the amended plaint dated 14.07.2009 due to inadvertence and (ii) that the petitioner-plaintiff intends to incorporate the details of *khasra* numbers purchased by Giani Ram from Partap Singh predecessor in interest of defendants no. 1 to 6; the land purchased by Giani Ram from Machhay Ram and; the details of land purchased by Giani Ram from one Vidyawati and to make consequential amendments.

6. There is no controversy with regard to the prayer to impleaded Katar Singh as the same was allowed by the trial Court vide impugned order.

7. The remaining dispute pertains to the prayer for amendment to incorporate the details of the property in question and the factum of filing of the objections in the execution in respect of some previous litigation in which Giani Ram was the judgment-debtor.

8. The averment of the petitioner-plaintiff in paragraph no. 2 of the amended plaint dated 14.07.2009 was as under:-

“That the father of the plaintiff Shri Giani Ram purchased 23 Bighas - 9 Biswa agriculture land comprised in Khewat No. 1372 (6 Bighas - 15 Biswa), 1411 (7 Bigha – 4 Biswa), 1459 (6-18), 1460 Min East (2-11), situated at village Simla Gujran under sale deed No. 460 registered by Sub Registrar, Panipat. The said land was purchased for consideration from Sardar Partap , the grandfather of the defendants.”

9. By way of amendment, the petitioner seeks to amend this paragraph to incorporate the following facts:-

“That the grandfather of the plaintiff Shri Giani Ram purchased 23 Bigas – 8 Biswa and 40B-13B agriculture land comprised in Khasra No. 1372, (6 Bigas – 15 Biswa), 1411 (7 Bigas – 4 Biswa), 1459 (6-18), 1460 Min East (2-11) vide sale deed no. 460 dated 03.03.1960 and land measuring 40B-13B was purchased by Sh. Giani Ram from Partap Singh to the extent of ½ share comprised in Khasra No. 701 (5-5), 702 (3-12), 70 (2-11), 704 (1-13), 705 (0-7), 706 (4-13), 707 (3-18), 708 (10-4), 710 (5-8) vide sale deed No. 161 dated 28.01.1960. Similarly other land comprised in Khasra No. 865 Min (2-5), 874 Min (2-8), 875 Min (3-3), 876 (3-9), 877 (1-4), 878 (5-16), 879 (3-5), 880 (4-4), 88 (4-19), 884 (4-7), 885 (0-15), 888 (0-9), 898 (5-8), 899 (0-12), 900 (2-14), 901 (2-14), 902 (4-1), 903

(3-18), 917 (4-16), was purchased by Sh. Giani Ram to the extent of ½ share from Machhay Ram son of Bahadur Chand vide sale deed dated 29.12.1959 and land comprised in Khasra No. 699 (2-15), 700 (6-10), 705 (1-12), 709 (6-6), 716 (1-1), 817 (2-3) was purchased from Vidyawati wife of Manohar Lal vide sale deed dated 03.03.1960.

That after consolidation of holding the position of suit land is as under:-

<i>Old Khasra Numbers</i>	<i>New Khasra Numbers</i>	<i>Area</i>	<i>Area taken from Krishan s/o Giani Ram</i>
<i>886 Min, 888 Min, 889 Min, 901 Min</i>	<i>35/22</i>	<i>6K-3M</i>	<i>6K-3M</i>
<i>871 Min, 886 Min, 885 Min, 875 Min, 894 Min, 901 Min</i>	<i>47/2</i>	<i>7K-7M</i>	<i>7K-7M</i>
<i>875 Min, 876 Min, 854 Min</i>	<i>9</i>	<i>8K-0M</i>	<i>2K-0M</i>
<i>855 Min, 859 Min, 860 Min, 812 Min, 754 Min, 854 Min</i>	<i>52/2</i>	<i>8K-0M</i>	<i>Area taken from Charkarwari 7K-8M</i>

Thus the whole of the suit land was not purchased from Partap Singh the predecessors in interest of defendants no. 1 to 6. The said land purchased from Partap Singh was later on sold by Sh. Giani Ram to Sh. Kishan & Chhottu much before filing of suit No. 338 of 1970. The vendor Kishan and Chhotu further sold the same to Dharam Singh s/o Ram Chander and Sh. Dharam Singh s/o Ram Chander further sold the said land to defendants no. 7 and 8.”

10. In the first amended plaint dated 14.07.2009, it was stated that the defendants filed execution proceedings with regard to judgment passed in Suit No. 338 of 1970 titled “Pritam Singh vs. Giani Ram” in the Court of Sukram Pal, the then Civil Judge, Panipat with respect to the agricultural land described in the plaint. It was further stated that the plaintiff filed an objection in the said execution but the same was dismissed and warrants of possession were issued regarding the suit land and in compliance of the said warrants of possession, the plaintiff was illegally dispossessed on 27.03.2001. The suit land is statedly described in the *jamabandi* for the year 2000-2001. On the basis of that the mutation was also sanctioned in favour of the defendants and their names were entered in column no. 4 of the *jamabandi* for the year 2000-2001. The said entry showing the defendants as owner of the suit land is illegal, null and void, not binding on the plaintiff and the plaintiff was not liable to be dispossessed in execution of the judgment and decree passed in suit no. 338 of 1970.

11. Now, petitioner wanted to withdraw the admission made in the earlier plaint by stating that the objections were not filed by the plaintiff rather the objections were filed by Raj Kumar etc. and objections filed by Raj Kumar were dismissed resulting into issuance of the warrants of possession. Since petitioner is the grandson of Giani Ram, the amendment was also prayed to correctly describe the petitioner by adding word “grand” before the word “father” in the relevant paragraphs of the original plaint

wherever it occurs. The application was opposed by the respondents by filing reply thereto.

12. The record of the trial Court was also called in both the petitions for disposal of these petitions.

13. I have heard learned counsel for the parties, perused the impugned order and the paper-book as well as the records.

14. Learned counsel for the petitioner, vehemently, contended that in execution of the warrants of possession for implementing decree earlier passed against Giani Ram, the petitioner was dispossessed of the land belonging to him and for that purpose record of the consolidation where new *khasra* numbers for old *khasra* numbers were carved out, is also to be tendered. For that it was submitted that in case the instant petition is allowed, the plaintiff would file revenue record in additional evidence and no other evidence. Further with regard to withdrawal of admission made in the plaint it was contended that the record itself would reveal that the objections were not filed by the petitioner but by Raj Kumar etc.

15. For the respondents it was contended that the application was not filed under Order VI Rule 17 CPC but only under Section 151 CPC and, therefore, the prayer for amendment was not maintainable. For that matter, learned counsel for the petitioner rightly submitted that even if wrong provision of the Code is mentioned in the title of the application, the Courts are still required to deal with the same under the relevant provision of law,

if the same can entertained. The learned counsel relied upon **L. Moolchand and others vs. Fatima Sultana Begum and others, 1995 (6) SCC 742**, wherein Hon'ble Supreme Court held that interests of justice are the primary consideration in granting or not granting prayers in a petition under Section 151 CPC. It was held that no rule or procedure can curtail that power of the court. This Court even in **Sansar Chand Mela Ram vs. Sham Lal Dhanpat Rai and others, AIR 1957 (Punjab) 307**, held that the fact that judgment-debtor described application as one under Section 151 CPC, did not preclude the Court from proceeding under Section 47, if that section was in fact applicable. It was further held that a litigant is only to state the facts and the relief he seeks in his pleadings, but not the law or particular section of the statute under which he comes. There cannot be any quarrel with the proposition of law as submitted by learned counsel for the petitioner but the question would be whether the amendments prayed for by the petitioner could be allowed in the facts and circumstances of this case?

16. I have given my thoughtful consideration to the proposition involved and have gone through the record of the trial Court and find that so far as prayer for withdrawing the admission is concerned, that cannot be permitted. Not only that there was an allegation in the plaint itself that the petitioner had filed objection in execution proceedings but in the witness-box as PW-1 while tendering affidavit, Ex. PW-1/A, there was a categorical assertion

in paragraph no. 3 of the affidavit that the petitioner filed an objection petition in the said execution proceedings but was dispossessed illegally from the land in his ownership.

17. Similar is the case with the affidavit of Krishan-petitioner in CR No. 7586 of 2011, tendered by him as PW-1/A, in the suit instituted by him.

18. Petitioner in cross-examination as PW-1 stated that Giani Ram his grandfather purchased the land from Partap Singh. Pritam Singh etc. who are sons of Partap Singh filed a suit against Giani Ram for cancellation of the sale deed and suit was decided in favour of Pritam Singh etc. and the sale deed in favour of Giani Ram was cancelled. That matter went upto Hon'ble Supreme Court. In cross-examination, the petitioner as PW-1 further admitted that in execution proceedings he had filed the objections and his objections were dismissed. The petitioner, who is claiming possession over the land, rather stated in cross-examination that he was presently in possession of the suit land.

19. To be more specific the petitioner now intends to allege that the land forming part of *khasra* no. 52/2 measuring 7K-8M has been carved out of old *khasra* numbers i.e. 855 Min, 859 Min, 860 Min, 812 Min, 754 in and 854 Min and these old *khasra* numbers are forming part of the land purchased by Giani Ram either from Partap Singh or Machhay Ram etc. by which he would make out absolutely a new case not originally pleaded. Similar in the case in respect of Krishan.

20. In view of the aforesaid facts, it is quite clear that purpose behind the proposed amendment is only to delay the disposal of suit. Unless, the petitioner comes up with a clear allegation as to which *khasra* number is connected with old *khasra* number on the basis of sale deeds mentioned in application for amendment, there was no possibility of permitting such an amendment.

21. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012 (11) SCC 341**, Hon'ble Supreme Court held that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, 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. There is no indication in the instant case for the petitioner to suggest that despite the exercise of due diligence these facts could not have been incorporated. However, the main purpose for allowing the amendment is to minimize the litigation.

22. As I have already discussed, the proposed amendment is so confusing that complete facts have not been highlighted in exact terms so that there could be some scope of entertaining the contention that the amendment in the nature prayed for, should be

allowed.

23. The broad principles for permitting the amendment have been laid down by Hon'ble Supreme Court in **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others, 2009 (10) SCC 84**, which are as under:-

- (i) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (ii) whether the application for amendment is bona fide or mala fide;
- (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (vi) 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.

24. In **Ramesh Kumar Agarwal vs. Rajmala Exports Pvt. Ltd. and others, 2012 (5) SCC 337**, Hon'ble Supreme Court held 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 particularly, in cases where the other side can be compensated with costs. In the case before Hon'ble Supreme Court, the suit was filed in 2007 and the amendment was applied immediately after filing of the suit i.e. in the year 2008 and before commencement of the trial. In that case, it was found that by the proposed amendment the plaintiff wanted to explain how the money was paid, though necessary averment in the form of foundation have already been laid in the original plaint.

25. Learned counsel for the petitioner also relied upon **Ganesh Trading Co. vs. Moji Ram, 1978 (2) SCC 91**, wherein Hon'ble Supreme Court held that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be recompensed by an order of costs. However, negligent or careless may have been the first omission, and, however, late the

proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. The facts of that case were that the suit was instituted by one of the partners of a dissolved firm the mere specification of the capacity in which the suit was filed could not change the character of the suit or the case. It made no difference to the rest of the pleadings or to the cause of action. Indeed, the amendment only sought to give notice to the defendant of facts which the plaintiff would and could have tried to prove in any case. This notice was being given, out of abundant caution, so that no technical objection may be taken that what was sought to be proved was outside the pleadings.

26. By way of proposed amendment, the petitioner definitely wants to set up absolutely a new case as originally it was stated that Giani Ram had purchased 23 *Bigas* and 8 *Biswas* of the land from Partap Singh vide sale deed No. 460 but by setting up a new case it was pleaded that land measuring 23 *bigha* 8 *biswas* and 40B-13B was purchased from Partap Singh vide sale deed dated 28.01.1960; Machhay Ram vide sale deed dated 29.12.1959 and Vidyawati wife of Manohar Lal vide sale deed dated 03.03.1960, for which respondents are definitely going to be prejudiced as a new case is sought to be set up. The claim originally was that the petitioners were dispossessed from the land on the basis of a decree passed against Giani Ram in respect of the land purchased from Machhay Ram. Now there is absolutely a different case. Such an amendment, therefore, which was applied

much after the commencement of proceedings in the trial, cannot be permitted.

27. Therefore, the instant revision is partly allowed permitting the petitioner in CR No. 7584 of 2011, to incorporate the word “grand” before the word “father” wherever it is required and also the consequential amendments in both the petitions CR No. 7584 of 2011 and CR No. 7586 of 2011 with regard to sale deeds executed by Kartar Singh son of Baja Ram as described in para nos. 6 to 8 of the application under consideration. Subject to the aforesaid permission the instant petition for rest of the amendments is dismissed. The record of the trial Court be sent back forthwith.

March 16, 2015
jk

(R.P. NAGRATH)
JUDGE