

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

C.R. No. 736 of 2015 (O & M)

Date of decision: 21.02.2015

Karamjit Kaur

....Petitioner(s)

Versus

Charanjit Kaur and others

...Respondent(s)

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

Present: Mr. I.S. Parmar, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3194-CII of 2015

Application for placing on record Annexures P-5 to P-7 is
allowed, subject to all just exceptions.

The said Annexures are taken on record.

C.R. No. 736 of 2015

Challenge in the present revision petition is to the order dated 06.10.2014 (Annexure P-1) whereby, the trial Court has declined the application for amendment of the written statement filed by the petitioner-defendant no. 2. The reasoning given by the Civil Judge (Jr. Divn.), Ludhiana is that the written statement had been filed on 01.05.2007 i.e. more than 7 years back and the case now is fixed for evidence of the defendant and at the fag end of the trial the application had been moved. The entire facts being within the knowledge of the petitioner at the time of filing of written statement but the application having not been filed at the initial stage and the entire evidence having been led and the case being fixed for her evidence, it was held that the application had been filed to fill

in the lacuna. Reliance has been placed upon the judgment of this Court in *Ajmer Singh vs. Girdhala and others, 2014 (3) CCC 56*.

The facts show that a suit for declaration was filed by respondent no. 1-Charanjit Kaur challenging the sale deed dated 13.03.2006 executed by one Garja Singh. The case of the plaintiff was that she was the legally wedded wife of Garja Singh deceased-defendant no. 1 having been married on 18.06.1985. The present petitioner had married Garja Singh on 06.07.1987 during subsistence of the marriage of the plaintiff and Garja Singh and even a criminal complaint had been filed against them and other relatives and they had been summoned to face trial. The sale deed dated 13.03.2006 in her favour was challenged on the ground that the same was null and void, without consideration and a result of fraud. Specific averments were made in para nos. 6 and 8 of the plaint, which were not specifically denied to the extent of the relationship of the parties and the second marriage. The fact that the petitioner was a bona fide purchaser and had nothing to do with the matrimonial relationship as set up by the plaintiff was not averred. As noticed, the trial proceeded ahead and when the case came to the stage of the defendant's evidence, the present application has been filed whereby, an amendment is sought in the written statement in para nos. 5 and 6 that the present petitioner had never performed marriage with Garja Singh and she is the wife of one Kulwinder Singh and similarly, in para no. 6, addition is sought to be made that she is the bona fide purchaser of the land measuring 8 bighas vide the said sale deed.

The said application was contested by the plaintiff on the ground that the property stood already attached and the evidence of the plaintiff had been closed and the application was a fraud upon the Court and

a gross abuse of process of law and no specific denial had been made and thus amounted to admission. The amendment would change the nature of the suit and the present amendment could not be allowed as it would cause grave prejudice to the plaintiff and damage the very foundation of the suit.

Counsel for the petitioner has vehemently argued that the law regarding the amendment of written statement is very liberal and placed reliance upon the judgment of the Apex Court in ***Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others, (2007) 5 SCC 602*** submit that inconsistent pleas could also be permitted and a liberal approach should be taken.

The facts have already been noticed in detail. Two insurmountable hurdles arise which the petitioner will not be able to cross. It has been time and again held that once trial has commenced, then the amendment should not be allowed, though the power to allow the same is wide. Reliance can be placed upon the judgment of the Apex Court in ***Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others, 2006 (12) SCC 1*** wherein, it has been held that once the issues have been settled and the case is set up for recording of evidence and trial has taken place, the amendment cannot be permitted except with due diligence.

In the present case, the plaintiff and the deceased Garja Singh were closely related. Specific allegations regarding the relationship of a matrimonial alliance having been entered into two years later with the present petitioner have been averred. The petitioner was thus well aware of the stance and has chosen not to specifically deny the said averments made at the initial stage regarding the matrimonial bond inter se with Garja Singh.

Secondly specific allegation now has been sought to be made that she was a bona fide purchaser and had nothing to do with Garja Singh as such. Thus, due diligence aspect also is missing in the present case.

The other issue which arises is that a party cannot be permitted to withdraw or take a totally contrary stand as to what had been pleaded earlier and the Court is to examine whether the amendment is bona fide or mala fide and parties have to be careful while drafting the original pleadings. The principles have been laid down by the Apex Court in ***Revajeetu Builders and Developers vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84*** wherein, even the earlier judgment relied upon by the petitioner in *Usa Balashaheb Swami and others' case (supra)* was taken into consideration. It was accordingly noticed that this Court had to examine whether the application is bona fide or mala fide and whether it would constitutionally or fundamentally change the nature and the character of the suit and if it did so, the Court would decline the amendment. The relevant observations read thus:-

“67. On critically analyzing 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.

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

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

Keeping in view the above principles laid down, this Court is of the opinion that the reasoning given by the trial Court for dismissing the application for amendment is well justified and does not warrant any interference on the grounds given above and the present revision petition is accordingly dismissed.

21.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE