

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7114 of 2014
Date of decision : September 24,2015

Gurmeet Singh and others

..... Petitioners

Versus

Harnek Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G. S. Jaswal, Advocate
for the petitioners.

Mr. J. S. Thind, Advocate
for the respondent Nos. 1 and 5.

Mr. J. S. Lalli, Advocate
for respondent Nos. 10 and 11.

1. Whether reporters of 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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 23.4.2014 whereby application under Order 6 Rule 17 CPC filed by the plaintiff-petitioner seeking amendment in the plaint, has been dismissed on the ground that it will alter the nature of the suit.

Mr. G. S. Jaswal, learned counsel appearing on behalf of the petitioners submits that in paragraph 2 of the plaint, there is a categoric averment with regard to the adoption of Jawala Singh by his Uncle Budhu Singh son of Khem Singh who was a real brother of father of Jawala Singh and by way of amendment lines in

paragraph 2 and 4 were sought to be incorporated.

He further submits that the other party would not be prejudiced as suit was/is at the stage of plaintiff's evidence. In support of his contentions he has relied on the judgment in **Mahila Ramkali Devi and others Vs. Nandram (D) through L.Rs and others 2015 AIR (SC) 2270 and Abdul Rehman and another Vs. Mohd.Ruldu and others 2012 (4)RCR (Civil) 481** to contend that power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice as the amendment sought would not alter the nature of the case and it would help to facilitate the court in arriving at a finding while deciding the *lis* between the parties.

Mr. J. S. Thind, learned counsel appearing on behalf of respondent Nos. 1 and 5 submits that there is no illegality and perversity in the impugned order as the amendment sought would definitely alter the nature of the claim in the plaint and as much as, that the plaintiff has not challenged the will already set up in the written statement. Therefore, the suit *ex facie* was not maintainable. In support of his contentions he has relied upon the judgment in **Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai(deceased) through L.Rs 2009 (3) RCR (Civil) 427** to contend that the amendment should be declined where it alters basic structure of the suit.

Mr. J. S. Lalli, learned counsel appearing on behalf of respondent Nos. 10 and 11 submits that he has no objection in

case the amendment sought, is allowed.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to refer to paragraph 2 of the plaint which reads thus:

“That Sh. Jawala Singh were two brothers and two sisters namely Hazura Singh, Jawala Singh sons of Devi Ditta son of Khem Singh and Shyam Kaur, Shahabdi daughters of Devi Ditta son of Khem Singh, Sh. Jawala Singh inherited the property from the natural father son of Khem Singh. Sh. Jawala Singh was adopted by his uncle (Chacha) Budhu Singh son of Khem Singh who was the real brother of father of Jawala Singh. The father of Jawala Singh had pre-deceased Budhu Singh son of Khem Singh. The pedigree table of Jawala Singh is as follows.”

The defendant No.1-contesting respondent in the written statement admitted the factum of adoption. The relevant portion of the same reads thus:-

The deceased Jawala Singh had executed a legal, valid and last WILL dated 17.10.1971 which had been scribed by Bura Ram, Deed writer and the WILL was thumb marked by Jawala Singh after admitting the same it to be correct in the presence of marginal witnesses Bir Singh and Karnail Singh, Lambardar of his village who had also signed the WILL in presence of Jawala Singh. The original WILL was seen by the plaintiffs No. 1 and 2 in the court of Ms. Bhawana Garg, Sub Divisional Magistrate cum Assistant Collector First Grade, Ludhiana, and the

plaintiffs No. 1 and 2 had also got the copy of said WILL produced on the record. Thus they are fully aware of the WILL and have thus no locus standi to claim the right in the land. The suit of the plaintiffs is also bad as they are only agnates. Jawala Singh had been adopted by Budhu Singh son of Khema and a registered adoption deed dated 10.12.1932 had been duly executed. In the adoption actual giving and taking took place. When the adoption took place the natural father of Jawala Singh had already died and on the death of natural father his estate had been inherited by his three sons Hazura Singh, Jawala Singh and Godha. Thereafter when the deceased Jawala Singh had been adopted he inherited the estate of Budhu as his adopted son that is why in the jamabandi the estate is being shown of Jawala Singh under two different heads. It is also pertinent to note that Godha died and his estate was inherited by Hazura Singh and Jawala Singh on 14.02.1927 i.e. prior to the adoption. This leaves no manner of doubt that the plaintiffs have absolutely no right in the property.”

The amendment sought during the pendency of the suit reads thus:-

“Under these circumstances, the plaintiffs want to amend the plaint as follows :-

a) In paragraph No. 2, in 6th line, the words "his adopted father" may be deleted.

b) In paragraph No. 2, the words "Sh. Jawala Singh was adopted by his uncle (Chacha) Budhu Singh son of Khem Singh who was the real brother of father of Jawala Singh" may be deleted and in their places, the following may be added :-

"Jawala Singh was appointed as heir by his uncle Budhu son of Khem who was the real

brother of father of Jawala Singh and Jawala Singh continued to remain son of Devi Ditta son of Khema".

c) In the pedigree table given in paragraph No. 2 of the plaint, below the names of Budhu and Jawala, the words "Adopted son" may be deleted and in their place, the words "Appointed heir of property of Budhu" may be allowed to be added.

d) In paragraph No. 4, on page No. 8 the words starting from "falling in the category of section 8 (C) of the Hindu Succession Act" uptill the end of this paragraph may be deleted and in their place, the following may be allowed to be added :-

"The parties to the litigation are Jat Sikhs by customary law. At the time when the said adoption is alleged to have taken place, it was custom to appoint an heir by the holder of estate after his death and such an adoption/ appointment as successor does not sever his ties with old family and Jawala Singh continued to remain the son of Devi Ditta and did not become the son of Budhu. It was merely an appointment of heir. On the death of Jawala Singh, he was survived by Harbans Kaur, daughter of Hazura Singh, Punjab Kaur and Harnam Kaur daughters of Sham Kaur and Surjit Kaur daughter of Sahib Devi. All the theirs are equally situated as per Schedule II of Hindu Succession Act. Hence Harbans Kaur is brother's daughter and Punjab Kaur, Harnam Kaur and Surjit Kaur are sister's daughter of Jawala. As per Schedule II both these relations are mentioned in Sub Clause IV of Schedule II of the Hindu Succession Act. The persons falling in Schedule II as per section 8 Sub Clause(b) shall succeed first than the person falling in category 8(C) and 8(d) and therefore, the orders passed by the revenue authorities on

misconception of law are wrong and are being challenged in the Hon'ble Punjab and Haryana High Court. In this case, the question is not of agnate and cognate as both the parties are similarly situated and placed as per Hindu Succession Act and Jawala never severed his relations with his original family and his father Devi Ditta and he never became son of Budhu as he continued to remain son of Devi Ditta and inherited his property.

Under these circumstances all the heirs of Jawala succeeding on his death are entitled to inherit his estate equally as per strip i.e. Harbans Kaur (daughter of Hazura Singh to the extent of 1/ 3rd share), Punjab Kaur and Harnam Kaur daughters of Sham Kaur to the extent of 1 / 3rd share and Surjit Kaur daughter of Sahib Devi to the extent of 1/3rd share. No other interpretation can be acceptable. The document dated 10.12.1932 has been wrongly interpreted by the authorities concerned as adoption deed as well as by the parties to the litigation. It is merely an appointment of successor/ heir of the estate left by Budhu who was unmarried and died issueless. This mistake was also committed by the parties to the suit and therefore, on wrong premises, evidence and pleadings, the matter has been decided. The document was misread, misunderstood by the parties and their counsels and the court, so it was a mistake of fact and law.

On the death of Devi Ditta on 17.01.1913, his property was succeeded by all his sons Hazura Singh, Jawala Singh and Godha equally vide mutation No. 81 dated 27.01.1916. Thereafter Godha elder brother of Jawala Singh died and his property succeeded equally by his brother Jawala and Hazura vide mutation No. 619 dated 14.02.1927 and this mutation clearly proved that Jawala was never adopted by Budhu and he succeed as

heir of his father Devi Ditta and later on as brother of Godha. As per Hindu Succession Act, the plaintiffs are successors of Jawala Singh being the heirs of Class II falling in Sub Clause IV category in line with defendant Harbans Kaur alias Gurnam Kaur. In fact the said document is not an adoption deed but only an appointment of successor by Budhu to his estate and hence on the death of Jawala, his successors will inherit the property as per the provisions of Hindu Succession Act 1956. This document dated 10.12.1932 is not an adoption deed at all. Jawala was never shown as son Budhu in any of the revenue record even after 1932 or sanction of mutation in his favour of the estate of Budhu. Even in mutation No. 2813, Jawala Singh is recorded as son of Devi Ditta son of Khema to the extent of one half share and hence the description of Jawala Singh as son of Devi Ditta never lost its importance and he continued to be the owner as son of Devi Ditta which also further fortifies the fact that document prepared on 10.12.1932 was only for appointment of Jawala as successor of the estate of Budhu being his real nephew".

On going through the aforementioned amendment sought to be incorporated, I do not find that the same would alter the basic structure of the suit. The pleadings as per provisions of Order 6 Rule 2 CPC have to be concise and brief and the parties are required to lead evidence by discharging the onus. The ratio decidendi culled out by the Hon'ble Supreme Court in **Mahila Ramkali Devi and others's case (supra)** is purely applicable to the facts of the case as the rules and procedures are intended to be hand made to the administration of justice and party cannot be refused just relief

merely because of some mistake, negligence or inadvertence of rules of procedure. The technical limitation should not come in the way of narrow interpretation. Since the amendment noticed above, would not alter the basic structure of the suit, therefore, the ratio decidendi relied upon by Mr. J. S. Thind, learned counsel appearing on behalf of respondent Nos. 1 and 5 in **Alkapuri Co-operative Housing Society Ltd.'s case (supra)** is not applicable.

Since the suit is at the stage of plaintiff's evidence and it has been informed to the court that plaintiff has already finished his evidence and in case, the proposed amendment is allowed, it would not tantamount to be an evidence without pleading.

In view of what has been observed above, the impugned order is set aside and the application filed under order 6 Rule 17 CPC seeking amendment is allowed in the aforementioned terms.

Accordingly, the civil revisions stands allowed.

(AMIT RAWAL)
JUDGE

September 24, 2015
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