

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

**Civil Revision No. 7248 of 2014 (O&M)
Date of decision:- 01.10.2015**

Surjit Singh & anr.

...Petitioners

Versus

Bhupinder Singh & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Harpreet Kaur Dhillon, Advocate
for the petitioners.

Mr. Dhirender Chopra, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 12.09.2014 (P-4) and allow application (P-3) filed under Order 6 Rule 17 CPC read with Section 151 CPC for filing the amended plaint.

Plaintiffs/petitioners (for short 'petitioners') purchased 17 kanals 7 Marlas of land from Gurdarshan Kaur and Amarjit Kaur vide sale deed dated 18.11.1963 (P-1/T) registered vide vasika No. 2133 dated 20.11.1963 and they were put in possession at village Talwandi Bhangarian. The petitioners had been in peaceful possession of

property since 1963. The petitioners preferred a suit against the respondents for declaration to the effect that they are joint owners in equal shares to the extent of $\frac{4}{5}$ th share of land measuring 21 kanals 17 marlas, on the basis of sale deed dated 18.11.1963 registered in the office of Sub Registrar Moga vide document No. 2133 dated 20.11.1963. After filing of written statement, the suit was listed for evidence, when the petitioners realizing the mistake on the part of their counsel omitting the pleading qua the land at village 'Dhalle ke' purchased vide sale deed (P-1), they filed an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint, which was dismissed on 12.09.2014 (P-4) after 20 months of the filing of the application. The learned Civil Court while dismissing the application had observed that petitioners had filed the present suit for declaration claiming their ownership of $\frac{4}{5}$ th share in the total land measuring 21 kanals 17 marlas i.e 4 kanals in Khewat No. 482/426 of which petitioners now seek to be tenants and also of land measuring 17 kanals 17 marlas. The petitioners through the proposed amendment further seek to claim declaration qua entire land measuring 17 kanals 17 marlas and in the alternative $\frac{4}{5}$ th share out of land measuring 21 kanals 14 marlas vide sale deed dated 20.11.1963. This fact is already in the knowledge of the petitioners. The stand taken by the petitioners through the proposed amendment is

contradictory to the earlier plea and there is no justification as to why and how this fact with regard the tenancy over 4 kanals could not be pleaded by the petitioners earlier. The case is already pending for the last five years.

Reference has been made to judgment of Hon'ble the Supreme Court in a case of ***Rajesh Kumar Aggarwal and others v. K.K. Modi and others, AIR 2006 S.C. 1647*** to contend that the object of Order 6 Rule 17 CPC is that Courts should try the merits of the case that come before them and should, consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Order 6 Rule 17 CPC consists of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. In para 16, 17 and 19 of the judgment, it has been observed as under:-

“16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy

between the parties provided it does not cause injustice or prejudice to the other side.

17. *Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.*

19. *As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena*

of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

On the other hand, learned counsel for the respondents has argued that the present application has been made after a gap of five years of filing of the suit and thus, the application has been rightly dismissed by the learned Civil Court and the petitioners had availed many opportunities to lead the evidence. The petitioners are neither in possession of the disputed property nor has purchased the land bearing Khasra No. 87//6/2.

Head learned counsel for the parties.

Order 6 Rule 17 of CPC reads as under :

"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."

As per the above said rule, the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should 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 for which amendment is sought before the commencement of the trial.

In the facts of the present case, the petitioners have placed on record jamabandi for the year 2008-09 (P-6) which shows that in land measuring 4 kanals 0 marlas, the petitioners have been recorded as cultivator in khasra No. 87//6/2. In the column of ownership, the name of Balwant Kaur widow of Gurbachan Singh has been mentioned. In the original plaint (P-4), the petitioners were seeking a declaration that they were joint owners to the extent of 4/5th share of the land measuring 21 kanals 17 marlas and they are in possession of remaining 1/5th share as tenants at will. The petitioners were aware about these facts at the time of filing of the suit. However, since the

dispute is between co-shares and declaration is being sought by the petitioners that they are owners to the extent of 4/5th share of the land measuring 21 kanals 17 marlas, the amendment should have been allowed by the learned Civil Court, which was that the petitioners are in possession of remaining 1/5th share as tenants at will. As per jamabandi for the year 2008-09 (P-6), the petitioners have been recorded as cultivator in khasra No. 87//6/2 and in the column of ownership, the name of Balwant Kaur widow of Gurbachan Singh has been mentioned.

Since the proposed amendment would be necessary to decide the real question in controversy between the parties, order dated 12.09.2014 (P-4) is hereby set and the proposed amendment sought by the petitioners is allowed

The revision petition stands allowed.

01.10.2015

G Arora

(**RITU BAHRI**)

JUDGE