

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 779 of 2015

Date of decision: 04.02.2015

Smt. Harsant Mohan Kaur and another

....Petitioner(s)

Versus

Rajinder Singh and another

...Respondent(s)

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

Present: Mr. BPS Virk, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India by the defendants is to the order dated 26.11.2014 (Annexure P-1) passed by the Additional Civil Judge (Sr. Divn.), Mohali, whereby, the application under Order 6 Rule 17 CPC for amendment of the plaint has been allowed and the relief of possession has been incorporated in the amended plaint.

The reasons which prevailed with the trial Court were that the plaintiffs merely want to seek relief of possession as a consequential relief of declaration and the proposed amendment would not change the nature of the suit nor will substitute the one cause of action with the other. It was also noticed that evidence had yet to be led though issues had been framed but no affidavit had been tendered. The judgment of the Apex Court in ***Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others, 2013 (9) SCC 485*** was held to be not applicable and the application was allowed subject to payment of ₹1,000/- as costs.

A perusal of the paper book would go on to show that

respondent no. 1, who is the brother of petitioner no. 2 and brother-in-law of petitioner no. 1 filed the suit for declaration that the sale deed dated 26.06.2007 in respect of House No. 1222, Phase 9, SAS Nagar, Mohali which was executed by his brother in favour of his wife on the basis of a sub attorney dated 01.12.1994 further executed by proforma respondent no. 2 and the subsequent transfer dated 13.07.2007 by GMADA on the basis of a sale deed was null and void, without consideration and was an act of fraud and criminal breach of trust and he was entitled to be declared as a owner of the property. The plea set up was that he was a Non-resident Indian living in Australia and the house was originally owned by one Bachittar Singh, who had executed a general power of attorney in favour of respondent no. 2 on 25.11.1993. The plaintiff had sold industrial plot no. 152, Udyog Vihar, Phase 1, Gurgaon and in order to invest had seen the house in dispute and respondent no. 2 had been working as a property dealer who had shown the general power of attorney in his favour. The deal was finalized and a Will was prepared in favour of the plaintiff on 21.11.1994 in presence of witnesses and respondent no. 2 had been instructed to execute the sub power of attorney in favour of the petitioner no. 2, who was his real brother. Sale consideration of ₹12,65,000/- had been paid from a bank account of Punjab National Bank bearing Account No. 11067 and the original agreement to sell had been handed over to petitioner no. 2. On various visits to India, he had been kept in dark by his brother and when he had insisted to get executed the sale deed in his favour, false excuses had been given and by misusing the attorney, the sale deed had been executed in favour of his sister-in-law petitioner no. 1 on 26.06.2007, which was a fraud and a criminal breach of trust. On the basis of the same, GMADA further

transferred the property on 13.07.2007, which was the subject matter of challenge. Accordingly, the suit had been filed pleading that even the police station, Phase 3, Mohali had been approached.

Written statement was filed by the present petitioners denying the allegations and that the plaintiffs had no legal right. Thereafter, the application for amendment was filed on 03.09.2014 for the consequential relief of possession placing reliance upon judgment of the Apex Court in ***Vidyabai and others vs. Padmalatha and another, 2009 (1) RCR (Civil) 763*** to contend that it would avoid multiplicity of litigation. Application was contested by the present petitioners on the ground that evidence had not been brought and the application had been instituted to delay the proceedings and the amendment would change the entire nature of the suit. Resultantly, as noticed, the application was allowed for the reasons noted above.

Counsel for the petitioners has vehemently assailed the order by submitting that the said facts regarding possession were well in the knowledge of the plaintiffs and, therefore, they had given up their right as such to claim possession. Counsel further submits that once the plaintiffs had chosen not to incorporate the relief of possession at the initial stage being well aware of the fact that the petitioners were in possession, they could not be permitted to change the nature of the suit which was for declaration at the initial stage.

After hearing counsel for the petitioners, this Court is of the opinion that the order passed is well reasoned. It is settled principle that amendments at the initial stage should be allowed to minimize the litigation and only where the relief is barred by time, the amendment is to be declined.

In the present case, as noticed, the transfer in the name of the petitioner no. 1 has only been effected on 13.07.2007. The suit for declaration has been filed in June, 2014 and, therefore, on that date, is not barred as such prima facie for incorporating the relief of possession. The Apex Court in ***Abdul Rehman and another vs. Mohd. Ruldu and others, 2012 (11) SCC 341*** has laid down the principles of the liberal application of the provisions. The relevant observations read thus:-

“7. It is clear 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. 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. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in [J. Samuel and Others vs. Gattu Mahesh and Others](#), (2012) 2 SCC 300 and [Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others](#), (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.

9 to 13. xxx xxx xxx

14. In Pankaja & Anr. vs. Yellapa (Dead) By Lrs. & Ors. AIR 2004 SC 4102 = (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger

interests of doing full and complete justice between the parties.”

Reliance upon the judgment in *Mashyak Grihnirman's case* (*supra*) is also without any basis since in the said case, the plaintiffs firstly had sought the same relief before a Co-operative Court at Mumbai and failed. They thereafter, approached the City Civil Court at Mumbai praying for the same relief and thereafter the said amendment was declined by the trial Court. The amendment was allowed by the High Court and the same was set aside by the Apex Court keeping in view the fact that the plaintiffs were aware of the earlier conveyance deed and, therefore, the application which had been filed was not only belated one but also an after thought. It was in such circumstances the amendment was set aside.

In the present case, it is not the case of the petitioners in any manner that the plaintiffs had resorted to another set of litigation earlier. Counsel has also submitted that Court fees has not been paid for relief of possession. Needless to say it will always be open to the petitioners to file an appropriate application to that effect since that was not the subject matter of consideration before the trial Court and neither it was raised in the reply to the amendment application.

Accordingly the present revision petition does not warrant interference and the same is dismissed.

Needless to say, any observations made herein including the one on limitation are solely for the purpose of deciding the present revision petition and the trial Court shall decide the case on merits keeping in view the evidence which comes on record.

04.02.2015
shivani

(G.S. SANDHAWALIA)
JUDGE