

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.8652 of 2014 (O&M)

Date of decision:06.01.2015

Indrawati & another

....Petitioners

Versus

Shakuntala & others

.....Respondents

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

Present: Mr.Surender Lamba, Advocate, for the petitioners.

G.S.Sandhawalia J.(Oral)

CM No.29033-CII of 2014

Application for placing on record copy of judgment dated 26.03.2012 (Annexure P4), is allowed. Said judgment is taken on record, subject to just exceptions.

CR No.8652 of 2014

Challenge in the present revision petition, filed under Article 227 of the Constitution of India, filed by the plaintiff-petitioners, is to the order dated 02.12.2014 (Anneuxre P3), passed by the Addl.District Judge, Bhiwani, whereby the application for seeking amendment of plaint, during the pendency of the appeal, has been dismissed.

The reasoning given by the Lower Appellate Court is that the stand of the plaintiff-petitioners was contrary to the earlier stand and by the proposed amendment, nature of the suit will be changed. The amendment was well within the knowledge of the petitioners at the time of filing of the suit. The application had been filed after more than 2 ½ years of filing of the appeal and therefore, the same was dismissed, vide the impugned order.

A perusal of the paperbook would go on to show that the suit was filed by the petitioners for declaration that the defendant-respondents had no concern with the property mentioned in the plaint as Ved Kaur was not the daughter of Chandgi Ram, the estate of whom was subject matter of consideration. Petitioners were predecessors-in-interest of one Ratan Singh, who was adopted vide adoption deed dated 06.05.1958 by Chandgi Ram. The mutation dated 20.07.1998, vide which, the property was divided between Ratan Singh and Chandgi Ram in equal shares, was subject matter of the suit and issue No.2 was also framed whether the same were null and void and not binding upon the rights of the parties. The Trial Court dismissed the suit on 26.03.2012 (Annexure P4) by noticing that the adoption deed mentioned that Chandgi Ram had one daughter and the plaintiffs had not been able to prove who was the said daughter of Chandgi and that she was not Ved Kaur. Resultantly, the appeal was filed before the Lower Appellate Court.

In the appeal, an application for amendment was filed whereby the entitlement of the shares of Ratan Singh and Chandgi Ram were now sought to be adjudicated upon, on the presumption that even if she was the daughter of Chandgi Ram on the basis of that, once notional partition had taken place between the coparceners.

The application was contested by filing reply whereby it was mentioned that the nature of the suit will change and cause irreparable loss to the defendants and the amendment should not be allowed. It is submitted that if it was accepted that Ved Kaur was the daughter of Chandgi, there was no relevance in the appeal and the nature of the suit as well as the subject matter of the suit was sought to be changed and the application had been only filed to linger on the proceedings. Resultantly, the impugned order has been passed, which is the

Counsel for the petitioners has placed reliance upon the judgment of this Court in **Col. Satwant Singh Vs. Smt. Uma Bakshi 2009 (1) PLR 560** and the judgment of the Apex Court in **Rajesh Kumar Aggarwal & others Vs. K.K.Modi & others 2006 (4) SCC 385** to submit that it is mandatory upon the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

After hearing counsel for the petitioners, this Court is of the opinion that the impugned order has been correctly passed. As noticed above, the initial case of the plaintiff-petitioners was to deny the children of Ved Kaur any share in the property. A finding has now been recorded against the plaintiffs that Chandgi did have a daughter and the plaintiffs have failed to prove that the name and identity of the said daughter of Chandgi and if she was not Ved Kaur. The issue which was the subject matter of the suit was that the plaintiffs were the sole owners and the respondents were not entitled for the inheritance of Chandgi.

By virtue of the amendment, the whole controversy, which was to be adjudicated upon and which is now sought to be adjudicated upon, would totally change the nature of the suit and is a totally contrary stand which has now been taken as to what would be the share of the parties *inter se*. It is settled principle that amendments which are only *bona fide* in nature are to be allowed and not the amendments which are *mala fide*. Reliance can be placed upon the judgment of the Apex Court in **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others 2009 (10) SCC 84** wherein it has been held that where the entire character of the suit is sought to be changed by way of amendment and the admission made in the pleadings and the plaint, cannot be sought to be amended or got rid of, and such amendment is not to be allowed. The general principle that the amendment of pleadings is that it is not to alter or materially substitute

therefore, an inconsistent plea is not permissible as it would amount to substituting a new cause of action. Relevant observations and the principles laid down read as under:

“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.”

The other insurmountable hurdle which lies in the way of the petitioners is that admittedly the trial has already commenced and the suit was decided on 26.03.2012, against the petitioners. It is settled principle under Order

6 Rule 17 CPC that after the trial has commenced, amendment is not to be allowed. The sole exception is where due diligence is pleaded and amendment is sought on the basis of facts not in the knowledge. In the present case, the facts have been noticed and the question of due diligence does not arise as the parties were well aware of their rights *inter se* themselves. In such circumstances, the amendment which is now being sought cannot be held to be justified in any manner.

The judgment relied upon by counsel for the petitioners in the case of Col.Satwant Singh (supra) was where the suit was at an initial stage and the parties were yet to lead evidence and pertained to the case of specific performance. Similarly in Rajesh Kumar Aggarwal's case (supra), the dispute was pertaining to the shares between the beneficiaries of the Trust and in such circumstances and keeping in view the facts, the amendment was allowed.

In the present case, as noticed, a totally contrary plea has been taken which would change the very nature of the controversy and the issues would have to be recast afresh and parties would have to amend their pleadings in order to rebut the case which has now sought to be incorporated. In such circumstances, the Lower Appellate Court was well justified in dismissing the application for amendment.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed. However, nothing said herein shall affect the rights of the parties, as the observations made herein are only for the purpose of deciding the present revision petition.

06.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE