

THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

R.S.A. No.1852 of 1989 (O&M)

Decided on : 18.02.2015.

Shiv Singh & Others

... Appellants

Versus

Gurbachan Singh @ Bachan Singh & Others

... Respondents

CORAM : HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present : Mr. Vishal Aggarwal, Advocate
for the appellants.

Mr. Gursher Singh, Advocate
for the respondent No.1.

None for the remaining respondents.

Raj Mohan Singh, J. (Oral)

C.M. No.1424-C of 2015

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Substantial questions of law as formulated in Para No.2 of the application are taken on record.

CM stands disposed of.

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1. Defendants No.1 to 3 are in appeal against the judgment and decree dated 07.03.1989 passed by Additional District Judge, Jalandhar.
2. Plaintiff Gurbachan Singh filed suit for declaration and injunction to the effect that he is owner of land as detailed in the head note 'A', 'B' and 'C' of the judgment of the trial Court. Originally defendants No.8 and 9 namely Nazar Singh and Pakhar Singh were owners of land measuring 100 kanals 16 marlas. Nazar Singh sold 17 kanals 6 marlas of land out of his half share in total 100 kanals 16 marlas to Samma Kaur (predecessor-in-interest of defendants No.4 to 7) vide sale deed dated 05.06.1957.
3. Aforesaid Samma Kaur further sold this land measuring 17 kanals 6 marlas to the defendants No.1 to 3 (present appellants) vide registered sale deed dated 22.11.1963. In this way, defendants No.1 to 3 became owner in possession of the aforesaid land. Thereafter, in March 1966, defendants No.1 to 3 had exchanged this land with Ram Singh (father of the plaintiff). In the said exchange 17 kanals 6 marlas of land was statedly exchanged by defendants No.1 to 3 with 12 kanals of land. Later on aforesaid Ram Singh died and plaintiff succeeded the estate of Ram Singh. Plaintiff claimed his ownership and possession over the suit land. Smt. Samma Kaur after her death succeeded by defendants No.4 to 7 as her legal representatives. Defendants No.8 and 9 are the original owners and defendants No.10 to 35

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have been impleaded as defendants as their names appeared in the revenue record. Since the right of the plaintiff was not acknowledged by the defendants, therefore, the suit came to be instituted.

4. Defendants No.1 to 3 (appellants) admitted the claim of the plaintiff and they pleaded no objection against decretal of the suit. Other defendants contested the claim.

5. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether defdts. nos.8 and 9 were previously owners of the disputed land in equal shares?OPP.*
- 2. Whether defdt. no.8 Nazar Singh sold land measuring 17 kanal 8 mls to Samma Kaur, vide registered sale deed dt. 5.6.57 with possession?OPP*
- 3. Whether Samma Kaur sold the aforesaid disputed land to defendants no.1 to 3 vide registered sale deed dt.22.11.63?OPP.*
- 4. Whether defdt. no.1 to 3 exchanged the aforesaid disputed land with Ram Singh father of plttf. In March, 1966?OPP.*
- 5. Whether plttf. became the co-sharer of the land in dispute to the extent of 346/2016 share as alleged in the plaint?OPP.*
- 6. Whether defdt no.33 and 34 are bonafide purchasers of 2 kanals 6 mls out of the disputed land for valuable consideration vide registered sale deed dt 22.4.83? OPD 33, 34.*
- 7. Whether defdt. no.16, 17, and 27 and 35 are bonafide purchasers of a part of the disputed land for valuable consideration as alleged in their W.S?OPD.*
- 8. Relief”*

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6. Under Issue No.1 trial Court held that defendants No.8 and 9 were the original owners of the land in question to the extent of half share each. Issue No.2 was also decided in favour of the plaintiff. Issues No.3 and 7, were jointly taken up by the trial Court. It was pointed out by the trial Court that Smt. Samma Kaur had already sold some share to Smt. Bachan Kaur and was left with only 12 kanals 4 marlas of land thus could have passed title of that much area in favour of defendants No.1 to 3. The sale deeds Ex.D5 and Ex.D6 in favour of Chanan Singh from Pakhar Singh and Charno were considered to be having no clash with the plaintiff and defendants No.1 to 3. Under Issue No.4, trial Court held that by virtue of reducing entitlement of Samma Kaur, the plaintiff had acquired title over 12 kanals 4 marlas of land only and that too subject to final partition between the co-sharers. Other issues were not considered relevant in the context of real controversy between the plaintiff and defendants No.1 to 3 and the trial Court decreed the suit partly and declared the plaintiff to be joint owner to the extent of 12 kanals 4 marlas of land subject to adjustment at the time of final partition between the co-sharers.

7. Plaintiff having dissatisfied with the judgment and decree of trial Court filed appeal before the Addl. District Judge, Jalandhar. Bachan Kaur also filed appeal against the said judgment and decree.

8. In the original suit, Para 10 of the plaint reads as under:-

“10. That the plaintiff feels aggrieved from the entries in the revenue record as these do not depict the correct position/picture. The plaintiffs are owners of the land measuring 17 Kanal 6 marlas or he is a co-sharer to the extent of 346/2016 share in the land fully detailed in the title and the above paras of the plaint. And the plaintiff is entitled to the declaration to this effect according to law and as a consequential relief, the plaintiff is entitled to restrain the defendants from dispossessing the plaintiff from the land owned and possessed by him as detailed above”

9. At the fag end of the appeal, an application was moved by the plaintiff-appellant under Order 6 Rule 17 CPC for amendment of the plaint.

10. Present appellants being defendants No.1 to 3 before the trial Court had already admitted the claim of the plaintiff before the trial Court and had no objection against the suit to be decreed. When the appeal before the lower Appellate Court was filed, the appellants/defendants No.1 to 3 appeared in person before the Additional District Judge, Jalandhar on 16.12.1986 and thereafter they were proceeded against ex parte vide order dated 05.03.1987. The factum of the appellants being proceeded against ex parte was duly in consonance with their stand before the trial Court as they had no objection against the suit being decreed on the basis of averments made in the original plaint.

11. On 23.01.1989, the plaintiff sought to amend Para 10 of the plaint thereby adding Para 10-A also. Proposed Para 10-A is reproduced as under:-

“10-A That defendants No.1,2,3 have wrongly and illegally in collusion with the revenue staff have shown to give the area (15-10) comprised in Kh.No.1205(7-1), 1206(6-17), total (13-8) to the extent of one half (6-19) and (8-11) area out of 2078/1209 of which area they were not the owners as vide mutation No.3045 decided on 24.6.66. The said area of Kh.No.1205 and 1206 has already been given to the plaintiff and as regards Kh.No.2078/1209, the defendants No.1, 2, 3 have only one half of share and not whole of it. Therefore, by this exchange defendants have wrongly taken (12-0) area from the plaintiff detailed as i.e. (7-2) area half of (14-4) out of Kh.No. (7-2) area half of (14-4) out of Kh.No.1997(5-12), 1998(0-3) and 2000(8-9), (0-15) are out of 2023(0-15), (4-8) i.e. the half of 1999(8-15) possession of which area is therefore liable to be restored back to the plaintiff as owner”

12. Order dated 23.01.1989 on the record of lower Appellate Court gives the following readings:-

*“Present: Counsel for the appellant.
Sh. J.D. Jain Adv. for respondent No.27.
Nemo for others.*

An application has been moved Under Order 6 Rule 17 C.P.C. for amendment of the plaint. Copy given. For reply and arguments come up on 30.1.89. Arguments in the main appeal will also be heard on the date fixed.

A.D.J/23.1.89”

13. Perusal of the aforesaid order does not show whether notice of this application was given to the appellants. Only defendant/respondent No.27 was contesting the appeal at that time.

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14. On 30.01.1989, the lower Appellate Court allowed the amendment of the plaint by passing following order:-

*“Present: Sh. J.S. Rakkar Adv. for the appellant.
Sh. J.D. Jain Adv. for respondent No.27.
Nemo for others.*

Reply to the application has been filed by Sh. J.D. Jain who has no objection to the amendment of the plaint and does not want to file W/S amended which merely relates to the grant of relief in respect of the land of defendant-respondents 1 to 3 is allowed in the endst of justice. No fresh evidence is sought to be led nor any fresh issue arises. Amended plaint already filed with the application is taken on record. Adjournment is requested by the counsel for the appellant for arguments which is allowed for tomorrow.

A.D.J/30.1.89”

15. By allowing Para 10-A to be inserted in the plaint without notice to the appellants/defendants No.1 to 3, basic nomenclature of the plaint as well as entitlement of the parties were materially changed. The appellants/defendants No.1 to 3 should have been called upon to contest the amended Para 10-A, because incriminating facts against them were incorporated in the pleadings of Para 10-A.

16. The admission of the appellants at the initial stage was only in respect of un-amended plaint as nothing adverse was pleaded against them. By virtue of incorporation of amended Para 10-A, the basic nature of the pleadings of the suit were materially changed to the prejudice to the interest of the appellants and for

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that lower Appellate Court did not invite any objection from the appellants.

17. The lower Appellate Court in Para 4 of the judgment took notice of averments made in Para 10-A of the plaint which was amended during pendency of the appeal. Para 4 of the judgment passed by lower Appellate Court is also reproduced as under:-

“The substance of the grievance of the plaintiff-appellants as reflected by averments in para 10-A of the plaint as amended during the pendency of this appeal, is that defendants 1 to 3 had given to Ram Singh in oral exchange land measuring 15 K -10 mls. to which they had no title. Mutation no.3045 was sanctioned on 24.06.66 in respect of the said exchange. Indeed, defendants 1 to 3 in the earlier oral exchange with Ram Singh had already given to him their share which they acquired from Sammat Kaur in khasra no.1205-06, whereas they had only 1/2 share in khasra no.2078/1209 but sought to transfer the whole of it. They thus got 12 kanals of land as specified in para 10-A ibid from the father of the plaintiffs in his ownership without consideration of any land in exchange”

18. Since the only question that survived for consideration before the lower Appellate Court was whether the said contention of the plaintiff in the amended plaint was well founded or not. The controversy was confined to the plaintiff as well as defendants No.1 to 3. Therefore, other co-sharers were not at all affected by the said course adopted by the lower Appellate Court. Even none

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appeared except respondent No.27 on behalf of defendants/respondents to contest the application for amendment and the respondent No.27 too lined with the plaintiff when he raised no objection to the amendment in question. Therefore, other respondents were not considered to be having any say in the context of allowing said application.

19. The lower Appellate Court took notice of two oral exchanges between the defendants No.1 to 3 on one side and father of plaintiff on other side and held that defendants No.1 to 3 got 12 marlas of land from Ram Singh without having any title to the land measuring 15 kanals 10 marlas, which they purported to give in exchange. Lower Appellate Court substituted the claim of the plaintiff with Para 10-A of the amended plaint and allowed the appeal by reversing the judgment and decree of the trial Court vide judgment and decree dated 07.03.1989.

20. Learned counsel for the appellant has formulated following substantial questions of law:-

- “I) Whether the Id. Lower Appellate Court could have allowed the amendment of plaint at the appellate stage?”*
- II) Whether the Id. Lower Appellate Court could have allowed the amendment of plaint at the appellate stage without even serving notice to the appellant?*
- III) Whether an amendment at the appellate stage can be allowed qua relief which should have been asked for by the plaintiff in the initial suit before the commencement of the trial?*

- IV) *Whether the Lower Appellate Court below has misread and misconstrued the pleadings of the parties?*
- V) *Whether the judgment and decree passed by the Id. Lower Appellate Court is sustainable in the eye of law?"*

21. Sum and substance of aforesaid formulation of question is whether amendment could have been allowed by learned Appellate Court without notice to the appellants/defendants No.1 to 3. Even though they had admitted original pleadings of un-amended suit. Since the amendment in question has brought out entirely a case against the defendants No.1 to 3/appellants, therefore, lower Appellate Court could have called upon the defendants No.1 to 3 to raise objections against the amendment in question. Since the Para No.10-A of the amended plaint has been substituted in place of entitlement of the plaintiff, therefore, such a relief should have come after adjudicating the version of the defendants No.1 to 3. In a changed scenario of the case particularly when the plaintiff has brought out a new case for the defendants No.1 to 3 and in such situation defendants No.1 to 3 might have something to say against the proposed course of action in amending the plaint.

22. In view of aforesaid, questions No.I to III are answered collectively to held that though there was no legal impediment in the way of lower Appellate Court in allowing the amendment of plaint at the appellate stage, but the same should have been done after issuing notice and inviting objections of the appellants

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particularly when there was no such claim projected by the plaintiff in the original suit nor such a claim was ever adjudicated between the parties. The appellants had pleaded admission of the original claim of the plaintiff. Therefore, questions No.I to III are jointly answered in favour of the appellants to hold that the lower Appellate Court ought not have allowed the amendment in question without issuing notice to the appellants/defendants No.1 to 3 and therefore, the principles of natural justice had been flouted. Question No.4 is held accordingly that the judgment and decree passed by the lower Appellate Court is the result of misreading of the pleadings. Since there was no pleading of the defendants No.1 to 3/appellants to the proposed amendment, therefore, in the absence thereof, the construction of pleadings should not have been taken as decided by the lower Appellate Court. Question No.V is also decided in affirmative to say that the judgment and decree passed by the lower Appellate Court being against the principles of natural justice is not legally sustainable in the eyes of law.

23. Since lower Appellate Court has not decided the case on merits and merely substituted Para 10-A of the amended plaint as relief clause for the plaintiff, therefore, it would be just and expedient to remand the case to the lower Appellate Court with a direction to revisit the decision on the application under Order 6 Rule 17 CPC i.e. amendment of the plaint and decide the same afresh after issuing notice to all concerned and thereafter decide

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the appeal on merits by giving reasonable opportunity of hearing to both sides.

24. Resultantly, impugned judgment and decree dated 07.03.1989 passed by Additional District Judge, Jalandhar, is set aside. Case is remanded back to lower Appellate Court for decision on merits after issuing notice of the application under Order 6 Rule 17 CPC to all the affected parties. Parties are directed to appear before the lower Appellate Court on 10.03.2015.

[Raj Mohan Singh]
Judge

18.02.2015
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