

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: January 11, 2016

1) *C.R. No. 1857 of 2012 (O&M)*

Geetu Bakshi

... Petitioner

Versus

Tara Devi and others

... Respondents

2) *C.R. No. 7068 of 2012*

Geetu Bakshi

... Petitioner

Versus

Tara Devi and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. A.P.S. Sandhu, Advocate,
for the petitioner in CR No. 1857 of 2012.

Mr. Satbir Rathore, Advocate,
for the petitioner in CR No. 7068 of 2012.

Mr. K.S. Cheema, Advocate,
for the respondents.

Paramjeet Singh Dhaliwal, J.

By this common order, both the revision petitions i.e. CR No. 1857 of 2012 and CR No. 7068 of 2012 are being decided together as these arise from the same suit.

CR No. 1857 of 2012 has been filed under Article 227 of the Constitution of India for setting aside order dated 06.02.2012 passed by

learned Civil Judge (Junior Division) Mukerian, whereby application filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC for amendment of plaint, has been dismissed.

CR No. 7068 of 2012 has been filed under Article 227 of the Constitution of India read with Section 151 C.P.C. for quashing order dated 13.09.2012 passed by learned Civil Judge (Junior Division), Mukerian whereby prayer of the petitioner for taking specimen signatures of the plaintiff/petitioner for the purpose of comparison with signatures on disputed document i.e. general power of attorney dated 13.12.1993 has been declined.

Brief facts of the case are that plaintiff-petitioner filed a suit for declaration to the effect that he is the exclusive owner in possession of land to the extent of 1/4th share, as detailed in the headnote of the plaint, on the basis of Jamabandi for the year 2002-03. Thereafter, when the defendants took up preliminary objections, the plaintiff-petitioner came to know that due to defective copy of jamabandi supplied by the Patwari, area of Khasra No. 23 of Rect. No.4 has been mentioned as Khasra No. 236. Similarly area of khasra no.3 of Rect. No.7 has been mentioned as 3K-0M in place of 08-0M and area of khasra no. 2/1 of Rect. No.7 has been mentioned as 3K-15K in place of 2K-15M. On 20.06.2011, the plaintiff-petitioner came to know that defendant no.1 got fabricated general power of attorney in her favour, dated 13.12.1993, by committing forgery and impersonating some one else in place of plaintiff. Defendant no.1 on the basis of general power of attorney, executed a sale deed dated 28.07.1995 in favour of defendant no.39. Therefore, plaintiff filed an application under Order 6 Rule 17 read

with Section 151 CPC for amendment of the plaint. Vide order dated 06.02.2012, learned Civil Judge (Junior Division), Mukerian dismissed the amendment application. Hence, the revision petitions.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that the learned trial Court has declined the amendment application on the ground that there is delay in effecting the service upon the defendants as well as on the ground that reference to the sale deed dated 20.09.1994 was already made in the plaint, therefore, the said fact was in the knowledge of the petitioner-plaintiff. Whereas, in fact, it came to the knowledge of the petitioner-plaintiff on 20.11.2011 that sale deed dated 28.07.1995 has been executed on the basis of fabricated general power of attorney dated 13.12.1993. This fact was not in the knowledge of the petitioner-plaintiff at the time when the suit was filed. Otherwise also, it is common that the pleadings are loosely drafted in the lower Courts. The plaintiff-petitioner should not suffer for the same. Otherwise also, these amendments are necessary for a just decision of the case. Besides this, there is another correction required to be effected with regard to area of khasra numbers.

On the other hand, learned counsel for the respondents vehemently opposed the contentions raised by learned counsel for the petitioner. Learned counsel for the respondent contended that at the belated stage, such amendments cannot be allowed.

I have considered the contentions raised by learned counsel for the parties and perused the record.

After hearing learned counsel for the parties, I am of the considered view that this petition must succeed. It is a well settled principle of law that where by mistake or inadvertence the plaintiff omits to claim an appropriate relief, the Court always has the power to grant the same according to the circumstances of the case. This principle is in fact recognized by Order 7 Rule 7 of the CPC. It is controlled by only three conditions, namely, (i) that the relief granted should be based on facts stated or referred to in the plaint and should not be inconsistent with the case set up by the plaintiff, (ii) the relief granted should be based on the same cause of action as the relief claimed in the suit and (iii) the relief granted to the plaintiff should not be of an entirely different description from the relief claimed in the plaint.

By way of seeking amendment in plaint, the petitioner wants to challenge the sale deed dated 20.09.1994 which has been executed by defendant no.1 in favour of defendant no. 39 on the basis of general power of attorney dated 13.12.1993, on the ground that the same is a result of fraud, impersonation and fabrication. The amendment so sought does not militate against the original relief claimed, but will avoid multiplicity of litigation.

It is now well settled by various decisions of the Hon'ble Apex Court as well as High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is likely to be caused to the other side or that the prayer for amendment is not a bona fide one. Moreover, rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even

infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder he had caused injury to his opponent which may not be compensated by an order of costs. Howsoever negligent or careless may have been the first omission and howsoever late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. Mere delay in making an amendment application, itself, is not enough to refuse amendment, as for delay other party can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.

The incorrect khasra numbers have been mentioned due to incorrect jamabandi supplied by Revenue Patwari which came to the notice of petitioner lateron.

So far as general power of attorney is concerned, the same is alleged to have been fabricated. For this purpose, amendment is necessary. The amendment will not cause a prejudice to the respondents.

Consequently, CR No. 1857 of 2012 is allowed, the impugned order dated 06.02.2012 dismissing the application of the petitioner-plaintiff for amendment of the plaint is set aside and application of the petitioner for amendment of the plaint is allowed, subject to costs of Rs.30,000/-, out of which Rs. 20,000/- will be paid to the respondents/defendants and Rs.10,000/- will be deposited with the concerned District Legal Services Authority. Amended plaint be filed within three weeks from receipt of certified copy of this order and respondents will be at liberty to file written statement, if any, to the amended plaint within two weeks thereafter. The petitioner will be at liberty to lead evidence with regard to general power of

attorney and sale deed.

So far as CR No. 7068 of 2012 is concerned, said revision also arises from the same suit. Since amendment of the plaint has been allowed and general power of attorney and khasra numbers are relevant, said revision petition is also allowed subject to costs of Rs.1,000/- to be deposited with the concerned District Legal Services Authority. The petitioner will be at liberty to lead evidence only with regard to the correct khasra numbers, the general power of attorney and the sale deed and not beyond that.

January 11, 2016
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[Paramjeet Singh Dhaliwal]
Judge