

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2021 of 2012 (O&M)

Date of Decision: 27.01.2016

Gurmeet Singh and Others

... Petitioner(s)

Versus

Charanjit Kaur

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. B.B.S.Sobti, Advocate
for the petitioners.

Mr. Namit Gautam, Advocate
for the respondent.

Shekher Dhawan, J.

Present petition is challenge to the order dated 21.1.2012, whereby application under Order 6 Rule 17 CPC read with Section 151 CPC, filed by the respondent, was allowed.

Facts relevant for the purpose of decision of the present petition that plaintiff filed suit for declaration to the effect that she is owner in possession of the property in dispute and also sought relief of permanent injunction for restraining the defendants from alienating the suit property. As per plaintiff, defendants had willfully denied the execution of compromise dated 10.11.1994 effected between the

parties. This fact was in the knowledge of the plaintiff because Sumittar Singh and Harbhajan Singh, defendants No.1 to 3, had earlier filed Civil Suit No. 384 dated 24.4.1995 titled "Sumittar Singh and Another v. Sher Singh and Another" and the same was decreed on the basis of compromise effected between the parties on 18.10.1995. Defendants No.1 and 3 had produced copy of said compromise dated 19.11.1994.

In the reply, filed by the defendants, objection was taken that application is not maintainable as proposed amendment was well within the knowledge of the applicant right from the beginning. More so, the proposed amendment shall give rise to *de novo* trial which is not permissible as per law.

On these facts, learned Civil Judge (Junior Division), Ludhiana passed the impugned order, thereby allowing the proposed amendment mainly on the ground that it was based upon subsequent facts.

Learned counsel for the petitioners submitted that the Court below has not considered the real controversy and simply allowed the application for amendment which should have not been dismissed out rightly. Learned counsel for the petitioners further submitted that civil suit, in this case, was filed on 21.9.2002. Application for amendment of the plaint was filed after nine years i.e. 28.11.2011 when the case was fixed for the evidence of plaintiff. Issues have already been framed and the respondent has already availed three effective adjournments for the purpose. Even by that date, plaintiff had not stepped into the witness box to make her statement. The only purpose

of the applicant was to delay the matter and to start *de novo* trial. Learned counsel for the petitioners further submitted that the respondent wanted to amend the pleadings on the basis of compromise dated 19.11.1994, which was much prior to the filing of the suit. This fact had already been pleaded in the earlier pleadings and issues having been framed on that point. More so, as per provisions of Order 6 Rule 2 CPC, such an amendment is not permissible. So, the present petition be accepted and impugned order be set aside.

Learned counsel for the respondent submitted that in fact, there were two separate civil suits. The existence of compromise dated 19.11.1994 was also subject matter of said litigation and by way of present application, plaintiff wanted to bring that fact on the file, which is most relevant for the just decision of the case and the Court below rightly accepted the prayer of the plaintiff and passed the order under challenge. Present petition is without any merit and the same be dismissed.

Having considered the controversy involved in the matter, this Court is of the considered view that plaintiff had sought amendment of pleadings which were not essential for the just decision of the case. It was because of the fact that the same pleadings were already on the file disputing the existence of compromise dated 19.11.1994. It was specifically mentioned in para No.3 of the plaint that compromise dated 19.11.1994 was effected between the parties with the intervention/persuasion of the Sarpanch, other panchayat members and respectables of the village. The same was denied by the

defendants in corresponding para No.3 of the written statement. In light of this background and the pleadings being already on the file, there was no question of allowing amendment of the pleadings almost on the same facts. At the most, applicant/plaintiff could prove the documents relating to the compromise dated 19.11.1994 in other litigation by way of production of certified copy of the document but there was no question of allowing amendment. The reasons for dismissal of such an application under Order 6 Rule 17 CPC are more than one. The application was allowed when the trial of the case has already begin and issues have been framed and plaintiff had already availed three adjournments for leading evidence but she had not been examined. As per amended provisions of Order 6 Rule 17 CPC, pleadings can be amended but there are two conditions precedent, firstly that amendment must be necessary for the decision of the controversy and secondly, no application may be allowed if the trial has commenced. Of course, the power has been given to the Court to allow amendment at any stage but the Court shall have to make an observation that there was any special ground for the purpose. In the case in hand, all these factors are against the acceptance of the application. The proposed amendment was not essential at all as the same was already on the file by way of pleadings of the parties. The trial had already commenced and applicant/plaintiff already availed three adjournments for the purpose. There was absolutely no reason for the Court to make an observation that such fact could not be pleaded earlier despite due diligence.

The provisions of Order 6 Rule 2 CPC makes it clear that every pleading shall contain only material facts and not evidence. For ready reference, Order 6 Rule 2 CPC is being reproduced hereunder:-

"2. Pleading to state material facts and not evidence.

(1) Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved."

However, the Court below has completely ignored these facts while deciding the application for amendment of plaint and passing order dated 21.1.2012.

Resultantly, present petition is accepted and impugned order dated 12.1.2012 stands set aside.

**(Shekher Dhawan)
Judge**

January 27, 2016

"DK"