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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2176-2015 (O & M)

Date of Decision: 27.02.2016

Jaideep and others

... Petitioner(s)

Versus

Gurbhajan Singh and another

... Respondent(s)

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

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

Present: Mr. Arvind Singh, Advocate,
for the petitioners.

Mr. Maharaj Kumar, Advocate,
for respondent No.1.

Paramjeet Singh Dhaliwal, J.

Instant revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 30.01.2015 (Annexure P-7) passed by learned Civil Judge (Jr. Divn.), Karnal whereby application under Order 6 Rule 17 CPC moved by respondent No.1-plaintiff for amendment of plaint has been allowed.

In brief, the facts relevant for disposal of instant revision are to the effect that respondent No.1-plaintiff filed suit for permanent

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injunction with the averments that he is owner in possession of the suit property. The suit property bearing No.H-102 measuring 22 bighas 14 biswas was purchased by certain persons and their names as well as particulars have been mentioned in para no.1 of the plaint. It has been further averred that the alleged sale deed, on the basis of which the petitioners-defendant Nos.3 to 6 are claiming their right/title, is absolutely bogus, illegal, null and void, *ab initio*. The predecessor-in-interest of respondent Nos.1 and 2 had already sold the entire area of the land which fell to their share after actual partition of 554.39 sq. yards of the part of khasra No.5196 and whole property No.H-102 and in this way there was not even an inch of the land available with respondent Nos.1 and 2 and in order to sell out the same to any person in any manner. Partial partition of the land comprised in khasra No.5196 (4B-2B) was done by Sh. Vidya Sagar, Tilak Raj, O.N.Wadhera, Pran Nath Wadhera and other associates as per the agreement dated 19.09.1988. The said partition was duly acted upon by the co-sharers who were party to the said agreement dated 19.09.1988. In other words, the legal heirs of Sh. Niranjan Dass, Shri Pardeep Wadhera, had sold the land measuring 1545.95 Sq. Yards after the death of their father. However, before these transactions of sale, Sh. Vidya Sagar had sold the land measuring 191.13 Sq. yards to the different persons. However, Mr. Deepak Wadhera, respondent No.3 had also sold the property measuring 125 sq. yards on the basis of forged Will. So in this way, the entire property sold by the

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legal heirs of Shri. Niranjn Dass comes to 1870.85 sq. yards. The legal heirs of Shri Niranjn Dass, Shri Pardeep Wadhera, had sold the land measuring 191.93 sq. yards to different persons. By way of amendment, the plaintiff wanted to amend the plaint in order to elaborate his pleadings further by giving the mathematical calculation of the shares pertaining to different parties, to the owner of the land and also that the share in the suit land sold out by the defendants. He also wanted to add a para mentioning that during the course of trial, the defendants had taken possession of the suit land after dismissal of the injunction application by the court and, therefore, he also wanted to add the relief of mandatory injunction. The plaintiff has further sought to amend the plaint in order to add relief of declaration to the effect that he is the owner of plot No.4 by virtue of registered sale deed No.13307 dated 22.02.2006 mentioned in para No.3 of the plaint and also that the sale deed No.8114/1 dated 10.10.2005 executed by defendant No.1 as GPA of defendant No.2 is illegal, null and void and the facts related thereto.

Upon notice, defendant Nos.3 to 6 i.e. petitioners herein filed reply to the application with the averments that respondent No.1 at no point of time had ever occupied the said land in dispute and has wrongly filed a suit for permanent injunction claiming himself to be in occupation when he was not in possession of the same, rather the suit land was in occupation of defendant Nos.3 to 6, who had purchased the said land from Deepak Wadhera through his attorney Smt. Asha Wadhera

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who was one of the co-sharers in the said land and had made the sale in favour of defendant Nos.3 to 6 and put them in occupation of the property and defendant Nos.3 to 6 have been in occupation of the same since the date of sale. It would not be out of place to mention that in this very context that the entire land measuring 22B-14 B which was an evacuee property having been purchased by Niranjana Dass etc. from Rehabilitation Authority had never been partitioned between the said owners. It is wrong that in the mutual partition arrived at between Niranjana Dass, land measuring 594.29 sq. yards in khasra No.5196 had come to the share of defendant Nos.1 and 2 who had already made the sale of the said land in favour of other persons. At the time of making of sale in favour of Joginder Singh by respondent No.3 through the attorney, he had share to the extent of land measuring 18½ biswas in the said undivided property measuring 22B-14B out of which he had made the sale of one biswa vide mutation No.24889, another sale of land measuring 3 biswas vide mutation No.24990, other share of 5 biswas vide mutation No.25199 also, an area measuring 2 biswas was sold vide mutation No.27749 and after deduction of the above said sale having been made by way of said mutations, respondent No.3 was left with an area measuring 7½ biswas in the year 2005 and 2006. Other averments in the application were denied and dismissal of application was prayed for.

The trial Court after hearing learned counsel for the parties

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allowed the application for amendment of plaint, vide impugned order dated 30.01.2015. Hence, this revision.

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

Learned counsel for the petitioners has vehemently contended that respondent No.1 has moved the application for amendment of plaint at a belated stage, when his application under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed vide order dated 16.08.2013 and his prayer for stay was declined. Even his appeal filed against the order dated 16.08.2013 has also been dismissed by learned Additional District Judge, Karnal vide order dated 20.01.2016. Respondent No.1 is not in possession, therefore, he cannot seek declaration with regard to the property in question and suit for declaration is barred by limitation. If the principle of '*relate back theory*' applies with regard to the suit property, respondent No.1-plaintiff will not be in a position to take the objection and reliance in this regard has been placed upon ***Vasant Balu Patil and Ors. vs. Mohan Hirachand Shah and Ors.*** 2016(1) RCR (Civil) 595.

Per contra, learned counsel for respondent No.1 has vehemently opposed the contentions of learned counsel for the petitioners and contended that there is no dispute with regard to the execution of sale deed in favour of the petitioners. The petitioners are owners in possession as co-sharers because the total land measuring 22

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B-14B was purchased by various persons including the petitioners and ultimately rights of the parties are to be determined.

I have considered the rival contentions of learned counsel for the parties.

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. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying is 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.

At this stage, this Court would not go into the question whether respondent No.1-plaintiff was in possession of the suit property as claimed by him at the time of filing the suit. Respondent No.1 sought permission of the Court to amend the plaint stating that possession has been forcibly taken from him after filing of the suit land. On the other hand, the petitioners-defendant Nos.3 to 6 have claimed that they have also purchased some portion of the land through co-owner Deepak Wadhera. Perusal of file reveals that respondent No.1-plaintiff made all the averments as mentioned in the application for amendment and sought a decree for declaration also. The amendment as sought by the plaintiff

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has been opposed by defendant Nos.3 to 6 primarily on the ground that the plaintiff was aware of the controversy and he was not in possession at that point in time. The amendment as sought has been moved after a considerable delay. There is no dispute with regard to the fact that the parties are claiming their rights on the basis of sale deeds executed by co-sharers in their favour respectively.

It is well settled law that while dealing with application for amendment of pleadings, the Court is not required to go into truthfulness or falsity of the averments which are sought to be incorporated by the respective parties.

In *A.K.Gupta and Sons vs. Damodar Valley Corporation*

1967 AIR 96, the Hon'ble Supreme Court has held as under:

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan (AIR 1921 PC 50) and L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.(AIR 1957 SC 357)”.

In *B.K.N. Narayana Pillai vs. P.Pillai & Anr.* AIR 2000

SC 614, the Hon'ble Supreme Court has held as under:

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

In *Anathula Sudhakar v. P. Buchi Reddy & Ors.*, (2008) 4

SCC 594, the Hon'ble Supreme Court has held as under:

“14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the

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property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

In *Nisha Somai vs. Outlook Publishing (India) Ltd. and*

Ors. 149 (2008) DLT 734, the Hon'ble Delhi High Court has held as under:

“9. The provision of Order VI Rule 17 of the Code of Civil Procedure confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as

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may be just. It is a settled position of law that the Courts while deciding a prayer for amendment should not adopt a hyper-technical approach. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Such of the amendments that are directed towards putting forth and seeking determination of the real questions in controversy between the parties ought to be permitted to be carried out.

10. The general rule is that pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof since in the former case, it can be assumed that the defendant would not be prejudiced as he would have the complete opportunity to counter the stand of the plaintiff/applicant post amendment. In cases where amendment is sought at a post-trial stage however, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case.”

This Court is of the view that prima facie, the plea of respondent No.1 in the application is that he has been dispossessed after filing of the suit and this is a subsequent act. At this stage, it cannot be said that the amendment as sought is a *mala fide* one. The amendment barred by limitation is not usually allowed, as it shall defeat the rights of other party. In this case, the detailed facts have already been given in the

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main plaint and also in the application. Moreover, the plaintiff is a purchaser from co-sharer, who is not disputing the sale deeds in favour of the plaintiff. Even defendant Nos.3 to 6 are claiming on the basis of sale deed which has been executed by defendant No.2 in favour of their common ancestor-Joginder Singh. Once the title is not in dispute and the only dispute is with regard to the factum of possession of the parties over the suit land and subsequent forcible dispossession, the same is to be determined ultimately after the trial. It is the case of the petitioners that instead of declaration, plaintiff should have filed the suit for partition, meaning thereby, they are accepting the rights of the plaintiff. It is premature, at this stage, to give a finding whether relief of declaration sought by the plaintiff on the date of filing of application for amendment will be barred by limitation. The amendment as sought apparently appears to be necessary and to avoid multiplicity of litigation between the parties. The trial Court has rightly allowed the amendment by passing a well-reasoned order.

In view of the above discussion, the instant revision is dismissed.

However, the defendants will be at liberty to show that relief (s) sought is/are barred by limitation and their vested rights cannot be defeated. It is also clarified that the amendment allowed by the trial Court shall be deemed to be allowed with a rider that amended relief should be deemed to have been claimed on the date of moving

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application for amendment of plaint. The amendment is permitted without prejudicing the rights of the petitioners and they will be at liberty to raise all the objections/pleas including limitation.

27.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge