

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

**CR No.2175 of 2014
Date of Decision-15.09.2016**

Ramesh Chand	... Petitioner
Versus	
Neena Saini and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Garg, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, Advocate for
Mr. Jaivir Yadav, Advocate
for respondents No.1 and 2.

None for respondents No.3 to 5.

RAJ MOHAN SINGH, J.

[1]. Order dated 20.01.2014 passed by Civil Judge (Junior Division), Pataudi has been assailed in the present civil revision whereby an application under Order 6 Rule 17 CPC filed by the plaintiff was partly accepted.

[2]. It has been pleaded by the plaintiff-petitioner that previously the predecessor-in-interest of the plaintiff and the proforma respondents were owners in possession of the land in question. Several properties were shown with different numbers as per assessment record of Municipal Committee, Farrukh Nagar, Gurgaon. The property in dispute was referred as No.71 to 71G situated in Ward No.1, Farrukh Nagar, District Gurgaon. When the defendant tried to dispossess the petitioner from the land in dispute, the petitioner-plaintiff filed a suit for permanent injunction

on the basis of ownership and possession. The relief of mandatory injunction was also sought besides the restraint order that in case defendants succeeded in dispossessing the plaintiff from the suit land during pendency of suit, then mandatory injunction be granted.

[3]. Defendants contested the suit thereby denying the title of the petitioner, rather contended that the disputed land was bearing No.72 in the record of Municipal Committee. The land was purchased by the defendants from their previous owners and since then, they were becoming as owner in possession of the same.

[4]. Defendant No.2 got registered a criminal case against the petitioner by alleging that he had purchased the plot measuring 88 sq. yards and when he visited this spot, he was beaten and thrown away by the petitioner and the plot was illegally occupied by the petitioner.

[5]. The controversy involved in the present civil revision is with regard to *prima facie* ground for allowing the application for amendment on the basis of report submitted by the Municipal Committee, Farrukh Nagar in respect of location and placement of the properties claimed by both the sides.

[6]. Suit was filed on 28.10.2006 to which written statement was filed by the defendants on 14.11.2016. Sale deed dated 15.07.1982 was pressed into service by the defendants-respondents on the strength of which they purchased the property

alleged to be the suit property, but denied by the plaintiff. On 19.12.2012, issues were framed. The case was adjourned for plaintiff's evidence. Even before framing of issues, a report of Municipal Committee was received in the Court, which was asked for by the trial Court for facilitating the Court to arrive at true conclusion. In the report submitted by the Municipal Committee, it was disclosed that the sale deed in favour of the defendants/respondents was not in relation to the property in dispute. On the basis of the aforesaid report, an application for amendment of the plaint was moved on 03.01.2013 seeking to incorporate that the sale deed in favour of defendants was not binding upon the rights of the plaintiff. Apparently, there was no prayer made for setting aside the same as the same related to some different property.

[7]. At the time of preliminary hearing of the matter on 24.03.2014, this Court passed the following order:-

“The suit was filed in 2006. The plaintiff's evidence who is the petitioner before this Court, is underway. The dispute relates to property. The Municipal Committee, Farrukhnagar, District Gurgaon is not a party to the present case. However, in 2012 the Committee by an order laid the dispute to rest that the sale deed on the basis of which title was claimed by the defendants does not relate to the present suit property. The report of the Municipal Committee to the said effect is dated 22.10.2012 and has been placed at Annexure P-2 (page 35-36 of the paper book). It is obvious that it is a

new and important matter which has come into existence pendente lite and obviously would not be a matter previously known to require due diligence for production.

The prayer in this petition is for setting aside the order of the trial Judge who has declined the request of the petitioner to amend the plaint to accommodate the plea supported by the report. Even though issues have been framed declining the request for amendment of the plaint in the circumstances may not be justified, but if the trial Court holds that the cause of action is fresh then that cause of action, if any, is in favour of the petitioner and not against him.

In these circumstances, power of limitation also does not appear to have come in the way of the petitioner to reject the application under Order 6 Rule 17, CPC. For these reasons, the impugned order dated 20.01.2014 passed by the Civil Judge (Junior Division), Pataudi has been challenged. If the petitioner has an independent right to file a fresh suit supported by the report then his contentions are in order to avoid multiplicity of proceedings. The present suit deserves to be amended and an issue framed accordingly to save time and energy even though the original suit may have been one for simple injunction.

Notice of motion returnable on 20.05.2014.

In the meantime, the plaintiff/petitioner would be permitted to lead evidence with respect to his possession and title and to keep matters arising out of the report of the Municipal Committee, Farrukhnagar, District Gurgaon to be dependent on the final result of this petition.

In case, the resolution of this revision is not possible within a short time then the trial Court would not close the evidence of the plaintiff nor would permit the starting of the evidence of the defendants.”

[8]. Apparently, the report of Municipal Committee was based on fact finding report to which new objections were raised by the defendants. The contention of learned counsel for the defendants is that the report of Municipal Committee is in respect of sale deed No.2046 dated 31.08.2006. Defendants-respondents in dispute claimed their title on the strength of sale deed dated 15.07.1982, which was specifically pleaded in the written statement on 14.11.2006. They asserted that the relief of declaration in the proposed amendment has become time barred and such a plea cannot be allowed to be introduced and the discretion vested in the Court should be exercised in a judicious manner. The report was received on 22.10.2012, whereas the application came to be filed on 03.01.2013. It was also contended that the report of Municipal Committee came to be made on 22.10.2012 i.e. subsequent to filing of the suit, therefore, any event taking place during pendency of suit is of no consequence.

[9]. Having considered the arguments, it is noticed that the report of the Municipal Committee was asked for by the Court itself in exercise of its *suo moto* powers in order to enable the Court to decide the controversy in just and appropriate manner. A fact finding report has been submitted by the Local Commissioner disclosing that the sale deed in favour of defendants is not in

respect of the land in dispute, rather the title conferred upon the defendants by virtue of aforesaid sale deed was in respect of some other land. Respondents did not file any objection to the report submitted by the Municipal Committee. The contention of the learned counsel for the respondents was that the report is in respect of different sale deed as both the sale deeds were executed in favour of defendants on the same day.

[10]. Be that as it may, at this stage, the requirement is only to see the *bona fide* nature of proposed amendment. The Court is not obligated to comment upon the veracity and ultimate evidentiary value of the amendment. The Court would be at liberty to assess the evidence of both the sides and decide the *bona fide* nature of the amendment or otherwise. The application was moved at pre-trial stage i.e. after framing of issues on 03.01.2013. The case was posted for plaintiff's evidence on 14.01.2013. The application based on report of Municipal Committee dated 22.10.2012 came to be filed on 03.01.2013. The cause of action accrued to the plaintiff-petitioner only after receipt of report dated 22.10.2012 submitted by the Municipal Committee. In considered opinion of this Court, proposed amendments which are *bona fide* in nature are to be allowed and their effect is to be seen by the trial Court at final stage.

[11]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real question in

controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The Court should not record any finding on merits of the amendment. The merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

[12]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[13]. In view of aforesaid, I am of the considered opinion that this petition deserves to be accepted. The amendment would minimize the litigation and it appears that the amendment is very necessary for determining real question in controversy between the parties. At this stage, the Court cannot go into the correctness and falsity of the pleas of the rival parties, nor the Court can record any finding on merits. Since the cause of action accrued to the petitioner during pendency of the suit, therefore, proposed amendment is required to be allowed as the same would not change the basic nature of the suit. It is also a settled principle of law that if on the basis of accrual of new cause of action, an

independent suit is maintainable, than the Court is justified in allowing incorporation of such a plea in the pending suit so as to minimize the litigation. Reference can be made to **Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others, 2006(2) RCR (Civil) 577** and **Raghu Thilak D. John Vs. S. Rayappan, 2001(1) RCR (Civil) 726.**

[14]. The Court may, in its discretion, allow an application for amendment of the plaint if the amendment subserves the ultimate cause of justice and avoids further litigation between the parties. In **Puran Ram Vs. Bhaguram and another, 2008(2) RCR (Civil) 499**, the Hon'ble Apex Court even incorporated the provision of Order 6 Rule 17 CPC to the effect that the Court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be inserted is allegedly barred by limitation, but such discretion has to be exercised on a judicious evaluation of facts and if the Court finds that the amendment subserves the ultimate cause of justice and avoids further litigation, such an amendment should be allowed. All the necessary pleas with regards to limitation etc. would be gone into by the trial Court at the relevant stage. The amendment of the plaint should not be refused on technical grounds. The *bona fide* or otherwise of the amendment is required to be seen by the Court at final stage.

[15]. Looking into the facts involved in the present case, this Court is of the considered opinion that the impugned order dated

20.01.2014 passed by Civil Judge (Junior Division), Pataudi deserves to be set aside.

[16]. In view of aforesaid, this revision petition is allowed. Application under Order 6 Rule 17 read with Section 151 CPC filed by the petitioner is hereby accepted. Necessary consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

15.09.2016

Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No