

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

**CR No.5426 of 2016
Date of Decision: 05.09.2016**

Tarsem Singh

.....Petitioner

Vs

Kashmir Kaur and others

.....Respondents

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

Present: Mr. Jasbir Singh, Advocate
for the petitioner.

Mr. Tarundeep Kumar, Advocate for
Mr. D.S. Pheruman, Advocate
for the respondent-caveator.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 12.07.2016 passed by Civil Judge (Senior Division), Gurdaspur vide which application under Order 6 Rule 17 CPC for amendment of written statement was declined.

[2]. The proposed amendment was to the effect that the plaintiff in para No.2 of the plaint has pleaded that Darbara Singh died interstate on 13.05.2009 leaving behind his two sons namely Prem Singh and Tarsem Singh i.e. defendants No.1 and

2. After the demise of Darbara Singh, the suit property was succeeded by defendants No.1 and 2 in equal shares.

[3]. In the written statement filed by the defendants, it was admitted that the property left by Darbara Singh was succeeded by defendants No.1 and 2 in equal shares. It was pleaded in the application for proposed amendment that inadvertently other facts could not be pleaded in the written statement. In fact, Darbara Singh did not die interstate, rather he executed a registered Will dated 27.01.1988 in a sound and disposing mind whereby he bequeathed his entire movable or immovable property in favour of his sons i.e. defendants No.1 and 2 in equal shares. Therefore, after the demise of Darbara Singh, defendants No.1 and 2 not only became owner by inheritance, but also by virtue of Will dated 27.01.1988.

[4]. Applicant/defendant No.2 filed the application for amendment of para No.3 of the written statement in the following manner:-

Para No.3: "Admitted that Darbara Singh died on 13.05.2009 but it is specifically denied that Darbara Singh died interstate. In fact Darbara Singh executed a valid, genuine and natural Will on 27.01.1988 while having a sound disposing mind during his lifetime on account of love and affection for his sons defendants

No.1 and 2, whereby he bequeathed his moveable and immoveable property, in favour of his sons defendants No.1 and 2 as such after demise of Darbara Singh, defendants No.1 and 2 succeeded the suit property in equal shares by virtue of Will dated 27.01.1988”.

[5]. The proposed amendment was objected to by defendant No.3-Kashmir Kaur on the ground that after the demise of Darbara Singh in the year 2009, a mutation of inheritance on the basis of natural succession was sanctioned on 07.07.2010. Thereafter, she purchased the property vide sale deed dated 23.07.2010 and became *bona fide* purchaser of the property without notice of any Will.

[6]. Suit was filed on 03.10.2010. The case was already fixed for defendants' evidence. Defendant No.3 objected to the amendment on the ground that in the initial written statement, the factum of Will was not pleaded and with the introduction of new plea in the written statement, the material prejudice would be caused to defendant No.3 who has become *bona fide* purchaser for consideration without notice.

[7]. 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.

[8]. 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.

[9]. In ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Para Nos.20 and 23 of the aforesaid judgment are being reproduced hereasunder:-

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement

stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”

[10]. Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may

be necessary for real determination of issues between the parties. Amendment can be allowed, even after commencement of the trial, if in the opinion of the Court that amendment could not be brought on despite knowledge and due diligence by the party and the party could not have raised the matter before commencement of the trial. The amendment in the written statement has to be liberally construed unless and until serious prejudice or irreparable loss is caused to the opposite side or the amendment is *mala fide*.

[11]. The question for consideration in the present *lis* is whether the proposed amendment is inconsistent with the plea already raised in the original written statement and the same can be raised at this stage. Since, defendant is entitled to incorporate inconsistent pleas by way of amendment of written statement, therefore, the question of its being inconsistent and not to be introduced by way of proposed amendment does not arise inasmuch that firstly the proposed amendment would not change the nature of the suit, rather it is in the form of explanation that besides ownership by way of natural succession, defendants No.1 and 2 were also owners by virtue of registered sale deed dated 27.01.1988.

[12]. The factum of alleged status of defendant No.3 being

that of *bona fide* purchaser or otherwise would be gone into by the trial Court at the relevant stage. The evidentiary value of the amendment would be considered by the trial Court at the time of trial. At this stage, evidentiary value cannot be judged. The amendment is only informative in character and is based on a document which was registered in the year 1988. The trial Court would be justified in appraising the evidence of both the sides in accordance with law and then returned the findings based on such evidence. The defendant is entitled to incorporate inconsistent as well as mutual destructive plea as the parameters for amendment of written statement are entirely different, than the parameters for the amendment of the plaint.

[13]. In considered opinion of this Court, the amendment needs to be allowed, however subject to payment of costs of Rs.10,000/- which would be a condition precedent for entertaining amended written statement on record.

[14]. In view of aforesaid, this revision petition is accordingly allowed.

05.09.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No