

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

**Civil Revision No.5521 of 2014**

**Date of Decision: 27.08.2016**

**Gurmail Singh and another**

**.....Petitioners**

**Vs**

**Bhajan Singh**

**.....Respondent**

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

Present: Mr. Prateek Gupta, Advocate  
for the petitioners.

Mr. Rahul Sharma, Advocate  
for the respondent.

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**RAJ MOHAN SINGH, J**

[1]. Petitioners have assailed order dated 03.05.2014 passed by Additional Civil Judge (Jr. Divn.), Nabha whereby application for amendment of written statement was declined.

[2]. Plaintiff/respondent filed a suit for permanent injunction seeking restraint order against the defendant/petitioners from illegally and forcibly dispossessing him from the suit land and also to restrain them from interfering into the peaceful possession of the plaintiff in respect of land measuring 1 *Kanal* 6½ *Marlas*.

[3]. Plaintiff alleged that in the suit he was owner in

possession of the suit property having purchased vide registered sale deeds dated 17.03.2009 and mutations on the basis of those sale deeds have already been entered and sanctioned in his favour. Plaintiff also alleged that the possession over the suit property was duly given to him by his vendors at the time of sale. Since the date of purchase, the plaintiff has been continuing as owner in peaceful possession of the suit property and has also constructed boundary wall around the suit property and has also installed a gate. On feeling positive threat perception at the hands of the defendants, the suit for permanent injunction came to be filed.

[4]. In the written statement the defendants denied the claim of the plaintiff. Defendant No.1 claimed himself to be the owner in possession of the suit land. Previously his father Ujjagar Singh was the owner of 30 *Kanals* of land out of 114 *Kanals* 10 *Marlas*. Defendants No.1 sold portion of land to Emandeep Singh and others on 05.06.2002. Defendant No.1 claimed himself to be the original owner for the last 35 years. After the sale of 05.06.2002, defendant No.1 remained owner of 27/2290 share as per *jamabandi* for the year 1995-96. The said share came to be 1 *Kanal* 6½ *Marlas* which was transferred by defendant No.1 to defendant No.2. Defendants also pleaded that under the agreement, land measuring 29 *Kanals* 7 *Marlas*

came to the share of defendant No.1 and his brother Surjit Singh in equal shares and remaining land went to other co-sharers as per agreement dated 24.06.1981. The pleadings of the plaintiff were claimed to be misleading. The vendors of the plaintiff were never in possession of the suit property, nor the claim of the plaintiff was denied on all counts.

[5]. During pendency of the suit, an application for amendment of the written statement was moved by the defendants. It was contended that the suit was fixed for 17.12.2012 at preliminary stage. During pendency of the suit, the plaintiff illegally and forcibly dispossessed defendant No.2 on 28.06.2012 from the suit land. In the earlier suit filed by defendant No.2, he sought relief of possession in respect of the suit land. Defendants pleaded that the original written statement did not bring out the full facts of the case. An impression was given that defendant No.2 was a vendee like many vendees of the suit property, whereas the facts were otherwise. Defendants claimed that para nos.1, 2 and 3 as shown in the application were sought to be incorporated. In para no.3 the words 'with the sale' were sought to be substituted with the words 'right, title or interest in the suit plot'. Additional pleas in para nos.5 and 6 were sought to be omitted and it was sought to be replaced by additional pleas.

[6]. At the time of moving the application, the suit itself was at initial stage and the amendment was thought appropriate in the light of aforesaid events for which elaboration and clarification were sought to be introduced in the original pleadings so as to avoid multiplicity of litigation. The execution of registered transfer deed dated 21.05.2009 by defendant No.1 in favour of defendant No.2 was claimed to be as an acceleration of succession.

[7]. Civil Judge (Jr. Divn.), Nabha dismissed the prayer for amendment of the written statement primarily on the ground that by way of amendment the defendants want to add altogether new case before the plaintiff. Defendants could not show that these facts were not within their knowledge and could not be incorporated in original written statement despite due diligence. The filing of application for amendment was claimed to be on account of filling lacuna in the case of the defendants. The written statement was filed on 15.06.2009 and the present application for amendment came to be filed on 17.12.2012. The amendment was declined on the premise that the proposed amendment will change the nature of the suit.

[8]. During course of arguments, it transpired that in the earlier suit, an application under Order 6 Rule 17 CPC was filed

for amendment of the plaint. In that previous suit Gurinder Singh defendant No.2 herein in the present suit filed a suit for permanent injunction on the basis of suit land having been transferred to him by his father Gurmail Singh. During pendency of the suit, he was dispossessed by defendant in the said suit. Amendment of plaint was sought to add relief of possession and the same was declined. In the instant case, the petitioners are the defendant and they wanted to incorporate the factual matrix in the pleadings at the initial stage.

[9]. Learned counsel for the petitioners submitted that since the suit itself is at initial stage, where issues have been framed and no plaintiff evidence has been led, therefore, amendment in any case will not prejudice the case of the plaintiff in any manner. Learned counsel contended that amendment of written statement stands on different pedestal and the defendants are entitled to take new and inconsistent stand. Even an admission in the pleadings can be explained away. Defendants can take inconsistent plea, even after taking definite stand in the original written statement.

[10]. 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.

[11]. 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.

[12]. 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.”*

[13]. 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*.

[14]. In the instant case, the earlier suit was filed by the present defendant No.2 for permanent injunction and on being forcibly dispossessed, he sought to convert the suit for permanent injunction into that of possession. The said amendment was in the capacity of plaintiff and was declined by the trial Court and affirmed by this Court in Civil Revision No.4304 of 2014. In the instant case, the petitioners are the defendants in the suit for permanent injunction filed by the respondent/plaintiff. The suit itself is at initial stage, wherein issues have been framed and no prosecution evidence has been led. The amendment which is being sought is primarily revolves around the fact that the earlier written statement was not happily worded and by way of amendment the defendants want to explain the already raised pleadings in an elaborate manner. The effect of amendment can be seen at the time of trial, even the defendants are entitled to take inconsistent pleas by way of amendment as per law laid down in **Usha Balashaheb Swami & Ors.** case (supra).

[15]. At the time of issuance of notice of motion, proceedings before the trial Court were stayed and, therefore, stage of the suit did not proceed from the initial stage.

[16]. Having considered the issues in the light of aforesaid proposition as laid down by the Hon'ble Apex Court in **Usha Balashaheb Swami & Ors.** case (supra), I am of the view that amendment in the written statement can be allowed, subject to payment of cost of Rs.10,000/- payable to the respondent. Ordered accordingly. The payment of cost shall be the condition precedent for allowing indulgence for amendment of written statement by the trial Court.

[17]. With the aforesaid observation, this revision petition is allowed.

August 27, 2016

Atik

(RAJ MOHAN SINGH)  
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No