

CR No. 6666 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

CR No. 6666 of 2016

Date of Decision:4.10.2016.

Amar Singh s/o Boor Singh now deceased through his Lrs.

---Petitioner

vs.

Pritam Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.L.S.Maan, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition directs challenge against order dated 17.9.2016 (Annexure P-8) whereby application filed by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (in short CPC”) for amendment of the plaint has been dismissed.

Amar Singh since deceased now represented by his legal representatives filed a suit for declaration that he is owner in possession of land measuring 2 kanals 7 marlas 3 sarsai, situated in village Turna, Tehsil Shahkot, District Jalandhar on the basis of registered sale deed dated

8.1.1973, detailed in head note of the plaint. Further challenge has been laid to the entries in fard jamabandi for the year 1976-77, sale deed dated 26.6.2007 executed by Nand Singh in favour of Gurwinder Singh, mutation No. 1912 sanctioned on the basis of oral exchange dated 17.3.2008 and 28.7.2010. The suit appears to have been filed in the year 2013. After the parties had already adduced their evidence and case was posted for hearing final arguments, an application was filed by the respondents/defendants for framing of additional issues that came to be dismissed by the trial court vide order dated 22.3.2016. The order passed by the trial court became subject matter of scrutiny in Civil Revision No. 2659 of 2016 and the same was decided by this court on 18.5.2016 and in consequence thereof, an additional issue was framed in the following terms:-

“Whether suit filed by the respondents/plaintiffs is within limitation? OPP”

One of the Lrs. of Amar Singh namely Jagir Singh filed an application under Section 151 read with Section 152 CPC (CM No. 12461-CII of 2016 in CR of 2659 of 2016) for clarification of order dated 18.5.2016.

Later, the instant application was filed by Lrs. of deceased Amar Singh seeking amendment of the plaint in order to add para 7-A. After reply to the application was filed by the contesting party and having heard counsel for the parties, the trial court dismissed the application vide the order impugned in the present case.

Counsel for the petitioner would submit that the facts sought to be added by way of amendment are nothing but to explain/elaborate stand of the petitioner already taken in the plaint. It is further submitted that law regarding amendment of plaint is quite liberal and rather the Court is required to allow all amendments which are necessary for determining the real question in controversy between the parties. Further argued that at the stage of deciding application for amendment of pleadings, the Court neither can go into correctness or falsity of the amendment nor can record a finding on merits of the amendment which is to be adjudged at the time of final disposal of the suit. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India ***Rajesh Kumar Aggarwal vs. K.K.Modi 2006(2) RCR(Civil) 577***. Further reference has been made to judgments of Hon'ble the Supreme Court of India ***Reevajeetu Builders & Developers vs.***

Narayanaswamy & Sons 2010(1) RCR(Civil) 27 and North Eastern Railway Administration Gorakhpur vs. Bhagwan Das (D) By Lrs.2008(3) RCR (Civil)165.

I have heard counsel for the petitioner and perused the paper book.

There cannot be any dispute about the settled position in law laid down in the judgments relied upon by counsel for the petitioner. In *Reevajeetu Builders & Developers' case (supra)*, the Apex Court has culled out certain factors to be taken into consideration while dealing with applications for amendments. In the case at hand, indisputably, the parties have already adduced their evidence as is apparent from order dated 22.3.2016 (Annexure P-3) whereby application filed by the defendant(s) for framing of additional issues was dismissed by the trial Court. This Court allowed framing of additional issue qua question of limitation and the plaintiffs were permitted to adduce evidence in regard thereto and thereafter a right of rebuttal to the defendant(s) qua the additional evidence. Application filed by the petitioner seeking clarification of order dated 18.5.2016 was disposed of by this Court vide order dated 11.7.2016 and a

relevant extract therefrom, reads as follows:-

“No clarification of order dated 18.5.2016 is warranted. In case applicant has any grievance to express against order dated 18.5.2016, he is always at liberty to avail an appropriate remedy, in accordance with law.”

The petitioner did not file any application to express his grievance with regard to framing of an additional issue in regard to the suit being within limitation. On the contrary, due to framing of an issue regarding limitation, he sought to amend the plaint in order to add para 7-A in the plaint. In para 2 of the application, it is averred that in view of additional issue framed by the Hon'ble High Court regarding the limitation period, plaintiff/applicant was to explain/elaborate the facts that when and how he came to know about the clerical mistake of the halqa patwari so plaintiff/applicant wants to add the following para 7-A in the plaint, reads as under:-

“That the true facts are Amar Singh has come to know about the mistake of Patwari Halqa regarding his omission of his name in the name of ownership column in the revenue record, then

Pritam Singh has filed the partition application on the basis of wrong revenue entry and when he gone through the Naksha 'urra' and he found that there is difference between ownership of land owned by the plaintiff and possession of plaintiff over the land due to abovesaid mistake of Patwari Halqa.”

There is no explanation by the petitioner as to why the facts now sought to be added were not pleaded in the original plaint. The mere fact that this Court framed an additional issue qua question of limitation is not sufficient to give a right to the petitioner/plaintiff to seek amendment of the plaint. Even otherwise, a reading of para No. 7-A, reproduced hereinbefore, does not make the things clear as to how by way of additional facts, the facts already pleaded in the plaint were sought to be explained/elaborated. In absence of any explanation by the petitioner much less a satisfactory one as to why the additional facts were not pleaded in the plaint originally filed on the basis whereof the parties have already adduced their evidence and brought the case to the stage of final arguments and

the discussion made hereinbefore, order passed by the trial Court can not be faulted with.

For the foregoing reasons finding no merit, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

4.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No