

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

CR No.7098 of 2015(O&M)

Date of decision:29.4.2016

Shish Ram

....Petitioner

VERSUS

Municipal Corporation Gurgaon and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Aditya Jain, Advocate for the petitioner.

Mr. Vishal Garg, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition has been directed against order dated 01.10.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Gurgaon, dismissing the application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the plaint filed by the petitioner.

Counsel for the petitioner would submit that Shish Ram and others have filed a suit for declaration with consequential relief of injunction claiming themselves to be owners in possession of the property in question with averments that their forefathers constructed *pucca* residential house on the land and the plaintiffs and perform defendants after demolishing the old construction, built new houses on the land prior

to the year 1961 and are residing there. It is further argued that in para 4 of the plaint, it has been wrongly alleged that plaintiffs and performas defendants deposited Rs.55,000/- as cost of the land prevailing at that time in the account of Gram Panchayat Teekri whereas actually the amount deposited was Rs.5700/-.

Another submission made by counsel is that a sale deed bearing Vasika No.736 dated 14.05.1983 was executed in favour of the plaintiffs by the Gram Panchayat and as the said sale deed was not traceable at the time of filing of the suit, the same could not be pleaded in para 9 of the plaint, though in the said para there is a detailed reference that payment was made to Gram Panchayat Teekri and the Gram Panchayat duly acknowledged the payment deposited on 20.07.1976. Counsel has further submitted that sale deed No.736 dated 14.05.1983 has already been proved on record and marked as Ex.P-2 but in case the plaintiffs are not allowed to amend the plaint, evidence adduced by them to prove the sale deed in question may not be read into evidence which may cause serious prejudice to the plaintiffs to establish their plea that they are owners of the land underneath their houses.

In addition, it is submitted that as the sale deed proved on record is a registered document and could not be procured by the plaintiffs subsequent to initiation of the proceedings, no prejudice would be caused to the respondent in case the proposed amendment is allowed, when otherwise the respondent can well be compensated with cost for delay attributable to the petitioner.

Counsel for the respondent has supported the impugned order with the submission that the application filed by the petitioner is clearly hit by the proviso appended to Rule 17 of Order 6 CPC as has been rightly held by the learned trial Court. It has further been argued that the plaintiffs produced the sale deed No.736 dated 14.05.1983 before the trial Court in the year 2013 but the application for amendment has been filed at a highly belated stage when the parties have already concluded their evidence. It is vehemently argued that keeping in view the facts and circumstances of the case, the petitioner is not entitled to indulgence of the Court.

I have heard counsel for the parties, perused the records and find that the petition is meritorious and deserves to be allowed.

Before advertng to the rival submissions made by counsel for the parties in the context of facts and circumstances of the case, it is appropriate to recall the latest position in law qua amendment of pleadings even after proviso to Rule 17 was added by way of amendment in the year 2002.

The Hon'ble Apex Court in Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, 2010(1) RCR (Civil) 27, has culled out certain factors to be taken into consideration while dealing with the application for amendment of pleadings. The relevant extract from para 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

In Abdul Rehman and another vs. Mohd. Ruldu and others,

2012(4) RCR (Civil) 481, the Court has held, in para 8, reads as follows:-

“8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be

considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others v. Gattu Mahesh and others, 2012(1) Recent Apex Judgments (R.A.J) 226: 2012(1) R.C.R. (Civil) 903 : (2012) 2 SCC 300* and *Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and others, 2012(2) Recent Apex Judgments (R.A.J.) 318: 2012(2) R.C.R. (Civil) 739: (2012) 5 SCC 337*. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

In the light of the principles culled out in Revajeetu Builders and Developer's case (supra) and the observations made in Abdul Rehman's case (supra), it becomes a settled position in law that the Court is competent to allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. Further, the main purpose for allowing the amendment is to minimize the litigation.

Reverting to the case in hand, the petitioner in the original plaint had raised a plea in para 9 that the Gram Panchayat Teekri after receiving the cost of land at the market value should have executed a conveyance deed in favour of plaintiffs and performa defendants but in spite of repeated requests made to the then Sarpanch of village Teekri, the Sarpanch put off the matter this way or the other. Had the sale deed sought to be impleaded by way of amendment been to the knowledge of the plaintiffs at the time of filing of the suit, there was no reason for them not to assert their claim on the basis of sale deed in question. This fact alone is sufficient to corroborate the version of the plaintiffs that they could not plead the sale deed in question despite exercise of due diligence at the time of filing of plaint. It is also an admitted fact that during the course of trial,

the sale deed in question was produced on record and has been marked as an exhibit and the said evidence was adduced before the Court in the year 2013. Had counsel for the plaintiffs, representing them before the trial Court, been careful and cautious, he would have filed an application for amendment of the plaint even before bringing the sale deed on record by way of evidence. It further appears that it is because of some lapse or remiss on the part of counsel, the plaintiffs did not file an application for amendment of the plaint at an appropriate stage of the proceedings.

The plaintiffs have filed a suit for declaration staking their claim to be owners of the suit land measuring 7 biswa 5 biswasi situated within the revenue estate of village Teekri Tehsil and District Gurgaon with khasra numbers detailed in para 2 of the plaint. They have further sought the consequential relief of permanent injunction qua restraint against interference in their peaceful possession. In case, the plaintiffs are not allowed to amend the pleadings in order to set up the sale deed in question, a registered document and thus being of the unimpeachable credibility and authenticity, a serious prejudice is likely to be caused to the plaintiffs when otherwise the sale deed is necessary for complete and effective adjudication of the matter in controversy and for just decision of the case. On the contrary, counsel for the contesting respondent is not in a position to say as to what prejudice would be caused to the respondent in case, the proposed amendment is allowed when otherwise the respondent can well be compensated with costs for delay attributable to the petitioner/plaintiff. In view of the above, the order passed by the trial

Court rejecting claim of the plaintiffs for amendment of the plaint cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the application filed by the plaintiffs for amendment of the plaint is allowed subject, however, to deposit of Rs.10,000/- with the trial Court which shall be released in favour of the contesting respondent as per rules.

APRIL 29, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE