

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

**Civil Revision No.7237 of 2015
Date of Decision: 23.08.2016**

Daljit Singh (Deceased) through LRs

.....Petitioner

Vs

Sunita (Deceased) through LRs and anr.

.....Respondents

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

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for respondent Nos.1 and 2.

RAJ MOHAN SINGH, J

[1]. Petitioner through his legal heir has assailed order dated 08.10.2015 (Annexure P-1) passed by Additional District Judge, Kaithal in Civil Appeal titled as Sunita vs. Daljit Singh etc., whereby application for amendment of written statement filed by the petitioner was dismissed.

[2]. Daljit Singh (deceased) filed a suit for specific performance against one Shanti Devi in respect of agreements to sell dated 28.05.1991, 14.01.1992, 08.01.1993 and 05.01.1994. In the said suit a compromise was arrived at

between the parties on 09.02.2005. As a consequence of that compromise, the order was passed by Additional Civil Judge (Sr. Divn.) Kaithal on 12.09.2007, thereby awarding the relief in favour of Daljit Singh to the effect that Smt. Shanti Devi daughter of Munshi son of Rupa shall get the sale deed executed in respect of the suit land within specified time of two months from the date of passing of the Award, after receiving balance sale consideration, failing which plaintiff Daljit Singh was held entitled to get the sale deed executed by the process of law.

[3]. An application under Order 1 Rule 10 CPC was filed in the aforesaid suit by the respondent Smt. Sunita Devi, which was dismissed by Civil Judge (Jr. Divn.) Kaithal vide order dated 13.02.2007. It was held that since the rights of the applicant therein were not infringed by the agreements to sell, therefore, she was not treated to be necessary party to the *lis*. Sunita Devi could not demonstrate anything to show that Shanti Devi had done away her right *qua* the land to the extent of 1/6th share in the suit property. In execution of said decision, Daljit Singh got the sale deed executed in his favour on 28.12.2007. Sunita Devi thereafter filed suit for declaration and permanent injunction against Daljit Singh as well as Smt. Shanti Devi, seeking decree for declaration that the agreements to sell dated 28.05.1991,

14.01.1992, 08.01.1993 and 05.01.1994, consequent sale deed dated 28.12.2007, judgment and decree dated 12.09.2007 and order dated 22.12.2007 were illegal, null and void and were not binding upon her rights. Decree for possession in respect of suit land was also sought to be passed.

[4]. Defendant Daljit Singh contested the suit after giving details as per his knowledge. It was pleaded that if, the plaintiff discloses some other fact in order to assert her title, then the defendant reserves his right to file additional written statement to answer such claim of the plaintiff.

[5]. Defendant Daljit Singh thereafter filed an application for amendment of the written statement which was contested by the plaintiff. In the application for amendment of written statement, it was contended by the defendant that the plaintiff never disclosed her source of ownership in the plaint and objection to that effect was raised in the written statement. While leading evidence, plaintiff adduced voluminous evidence to prove her case. The documents which were produced in evidence were never relied upon by the plaintiff either in the plaint, nor the same were annexed with the plaint. Therefore, at the time of filing of written statement defendant was not in a position to file detailed written statement and, therefore, amendment was

sought on these broad lines. Preliminary objection Nos.4 to 6 were sought to be amended in the following manner:-

“Preliminary objection no.4: Answering defendant is a bonafide purchaser for a valid consideration without having any knowledge and notice of defect in the title of his vendor. The answering defendant purchased the land in dispute vide sale deed dated 28.12.2007 in good faith for a valid consideration and after verifying the revenue record which stood in the name of vendor of answering defendant as such title of answering defendant is protected under Section 41 of Transfer of Property Act.

Preliminary objection no.5: That civil court is not the proper forum to set aside the award dated 12.09.2007 as the same has been passed before Samjhota Sadan under the Legal Services Authority Act.

Preliminary objection no.6: That the judgment and decree dated 24.05.1996 passed in civil suit no.1159 of 1992 is not binding upon the rights of answering defendant as the answering defendant is not the party to same and the same is null and void and ineffective against the answering defendant.”

[6]. Trial Court dismissed the application for amendment vide order dated 19.09.2012. Aggrieved against the same, Civil

Revision No.6178 of 2012 was filed by the defendant/petitioner (herein) before this Court. On 15.05.2013, it was noticed by this Court that the suit filed by the plaintiff was already dismissed by the trial Court, therefore, the revision stood rendered infructuous. The suit itself was dismissed on 21.03.2013 against which appeal was filed by the plaintiff-Sunita Devi through her legal representatives.

[7]. In the pending appeal, the present petitioner, who was defendant in the main suit filed an application for amendment of the written statement. All the aforementioned preliminary objection Nos.4 to 6 were pressed into service to claim amendment of the written statement. Additional District Judge, vide order dated 08.10.2015 dismissed the application.

[8]. It is settled principle of law that amendment of written statement is to be liberally construed. The parameters laid down for amendment of plaint are something different and are not co-extensive to the parameters required for amendment of the written statement. The Appellate Court in terms of Section 107(2) CPC has the same power as that of Court of original jurisdiction where suit is instituted. Therefore, the requirement of law as existed before the trial Court can be exercised by the lower Appellate Court for procedural compliance. The power of

Appellate Court in terms of determination of case finally are more or less same and same duties are enjoined upon the Court as conferred and imposed by the Code. The Appellate Court can exercise its powers to determine a case finally, to remand a case, to frame issues and refer them for trial and to take additional evidence or to require such evidence to be taken. The Appellate Court shall have the same powers and shall perform the same duties as are conferred and imposed by the Code on the Court of original jurisdiction.

[9]. Keeping in view the nature of amendment sought in the written statement, previous litigation wherein a suit for specific performance was decreed and sale deed dated 28.12.2007 was executed in execution and the application under Order 1 Rule 10 CPC filed by the present respondents was dismissed in the said previous suit, the amendment and its effect can be seen at the ultimate trial of the suit. Since the amendment in the written statement is on different parameters and is to be liberally construed, defendants at any stage may take contradictory stand, the effect of such stand can be taken care of at the conclusion of the trial.

[10]. Keeping in view the amendment sought in the written statement and the previous litigation, more particularly the

process of the Court which ultimately resulted in decree for specific performance and execution of sale deed in execution of said decree, this Court is of considered opinion that the amendment of the written statement can be allowed, even at appellate stage. Since the suit of the plaintiff was dismissed by the trial Court, therefore, the petitioner/defendant had no opportunity to press the said application in the grounds of relief. The appeal was at the instance of plaintiff. The defendant could not moved the application under Order 7 Rule 11 CPC because at that stage the petitioner had no ground to move such application as the same was subject matter of some evidence.

[11]. Keeping in view the nature of amendment and the avenues which were not available to the petitioner on earlier occasion, particularly in view of the fact that the earlier Civil Revision No.6178 of 2012 could not be decided on merits as by that time the suit itself had been dismissed by the trial Court in favour of defendant/petitioner. Therefore, in considered opinion of this Court a fair chance should have been given to the defendant/petitioner to espouse his cause of action for seeking amendment in question. A liberal construction to the amendment of pleadings more particularly in case of amendment of written statement has all the reasons for granting such indulgence in favour of defendant/petitioner.

[12]. In view of aforesaid, impugned order dated 08.10.2015 passed by Additional District Judge, Kaithal is hereby set aside. Petitioner/defendant is permitted to amend the written statement at appellate stage. This revision petition is accordingly accepted.

August 23, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

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