

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7894 of 2016

Date of Decision:23.11.2016

Kamaljit Kaur and another

.....Petitioners

Versus

Surjit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajiv Joshi, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 16.09.2016 passed by Civil Judge (Senior Division), Jalandhar vide which application under Order 6 Rule 17 CPC filed by respondent No.1 for amendment of written statement was allowed.

[2]. Plaintiffs-petitioners filed a suit for declaration to the effect that they are owners in joint possession to the extent of 1/4th share each along with defendants on the basis of natural succession in the property measuring 31-1/2 marlas i.e. half of the share of late Gurmeet Kaur, out of total land measuring 63 marlas situated at village Ladhewali, Tehsil Jalandhar as per *jamabandi* for the year 1992-93. Further declaration was sought that alleged Will dated 16.11.1995 executed by late Gurmeet Kaur was wrong, illegal, collusive, void ab initio and forged.

Consequent mutation was also claimed to be illegal, null and void. Restraint was also sought from alienating or creating encumbrance over the property during pendency of the suit.

[3]. The suit was contested by the defendants. During pendency of the suit, an application for amendment of written statement was filed by defendant No.1 on the premise that at the time of drafting the written statement, factum of execution of four sale deeds in respect of suit property could not be incorporated in the written statement by the earlier counsel despite the fact that the same was duly disclosed to him. The aforesaid fact was claimed to be a material fact for just decision of the case. The amendment of written statement was sought by way of adding preliminary objection No.12 in the written statement. The same reads as under:-

“That the applicant has already executed four sale deeds with regard to the suit property on 11.08.2011 in favour of Harvinder Singh son of Sohan Singh, Kewal Singh son of Hari Singh, Jagir Singh son of Dalip Singh and Saudagar Singh son of Dalip Singh, all residents of Village Chogitti for a valid consideration and for that reason the suit of the plaintiff deserves dismissal.”

[4]. In the main suit, even issues were not framed at the relevant time and therefore, it was claimed that in the event of

accepting the application for amendment of written statement, no prejudice would be caused to the plaintiff. The proposed amendment will not change the nature of the suit, rather it was an elaboration of facts on behalf of defendant No.1.

[5]. The application was contested by the plaintiffs on the ground that the fact was very much known to defendant No.1 at the time of filing of original written statement. It was also submitted that plea of change of counsel was not tenable inasmuch as that at the time of decision of application under Order 39 Rules 1 and 2 CPC, the same counsel pursued the case of the defendants.

[6]. I have heard learned counsel for the petitioners.

[7]. Evidently, the suit is for declaration challenging the Will executed by late Gurmeet Kaur mother of the parties. The property in question is claimed to have been sold by defendant No.1 vide four sale deeds dated 11.08.2011 in favour of Harvinder Singh, Kewal Singh, Jagir Singh and Saudagar Singh for consideration. Since the property was alienated by defendant No.1, therefore, factum regarding sale is required to be incorporated in the pleadings for just and proper decision of the case, because in the absence of the same, proper adjudication cannot be made and it would give rise to further course of litigation.

[8]. It is also a settled principle of law that the defendant can incorporate inconsistent pleas in the written statement. The amendment of written statement is to be liberally construed and the parameters laid down for amendment of written statement are somewhat different than the one required for amendment of plaint.

[9]. 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.

[10]. 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.

[11]. In the present case, even issues have not been framed, nor any evidence has been led on record. At this stage of litigation, it would be just and proper to allow defendant No.1 to amend his pleadings.

[12]. In view of aforesaid, in my considered opinion, there is no legal infirmity in the impugned order dated 16.09.2016 passed by Civil Judge (Senior Division), Jalandhar, nor the same is found to have suffered with any error of jurisdiction or legal perversity. This revision petition is accordingly dismissed.

23.11.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No