

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

Civil Revision No.8181 of 2014

Date of Decision: 04.11.2016

Phul Pati

.....Petitioner

Vs

Bhim Singh and another

.....Respondents

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

Present: Mr. M.K. Garg, Advocate
for the petitioner.

Mr. Varun Jain, Advocate for
Mr. Arun Jindal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 03.11.2014 passed by Civil Judge (Sr. Divn.) Jind, in a suit for declaration with consequential relief of permanent injunction, titled "*Smt. Phul Pati vs. Bhim Singh and others*" vide which application for amendment of the plaint was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that judgment and decree dated 01.10.1980 passed in a civil suit was illegal, null & void and not binding upon the rights of the plaintiff. Consequential relief of permanent injunction was also sought to restrain the defendants from alienating or creating any

encumbrance over the suit property.

[3]. The suit was contested by the defendants by filing the written statement. Thereafter replication was filed by the plaintiff.

[4]. After completion of the pleadings, case was fixed for evidence of the plaintiff. No plaintiff witness was examined on 12.03.2014. Application under Order 6 Rule 17 CPC was filed by the plaintiff on the ground that in the written statement, plea was taken by the defendants that suit for mere declaration was not maintainable as the defendants were owners in possession over the suit land. Plaintiff sought to amend the headnote of the plaint in the following manner:-

“(a) That in the head note of the plaint in 9th line after the words 'mortgaging or encumbering' the following sentence is to be added:

“land measuring 28 Kanals 0 Marla comprised in Khewat No.593, Khatoni No.901, Rect. No.25 Killa No.6(8-0), 7(8-0), 14(8-0), 15(4-0) situated in Vill. Alewa, vide Jamabandi for the year 1974-75 and now comprised in Khewat No.830 Khatoni No.1183 of revenue estate of Vill. Alewa vide Jamabandi for the year 2009-2010”

(b) That in the head note of the plaint at the end

the following sentence is to be added:-

“and consequently for possession/ joint possession of aforesaid land alongwith mesne profits @ Rs.30,000/- per acre per annum, on account of unauthorised use and occupation, from the date of filing of the suit till delivery of possession thereof to the plaintiff”

(c) *That in para No.9 of the plaint in second line after the words 'judgment and decree dated 01.10.1980' the sentence “and consequent mutation No.6318” is to be added.*

(d) *That at the end of para No.9(iii) of the plaint the following sub para is to be added:-*

“iv) That the plaintiff never suffered the impugned judgment and decree by filing any written statement, by appearing in court or by suffering any statement in favour of the plaintiff (now defendants) in the court. The plaintiff was absolute owner and in possession of the land in dispute as co-sharer in the Khewat. There was no preexisting right of the present defendants in land in dispute as they were not members of her family nor they had any right to inherit her estate and so no question of making any

family settlement in the year 1980 and relinquishing her right in their favour arises nor any alleged family settlement ever took place nor got incorporated in the revenue records. The plaintiff never received any summons of the suit alongwith copy of plaint from the court nor she had engaged any advocate for preparing and filing the written statement thereby admitting their claim in toto. The plaintiff never delivered possession of the suit land to the defendants nor she can deliver the same. The plaintiffs (present defendants) never became owner in possession of the land in dispute and of the share of present plaintiff on the basis of impugned judgment and decree dated 01.10.1980 and its consequent mutation No.6318 and this mutation was got entered and attested by the present defendants in absence of the present plaintiff. Thus, the impugned judgment and decree and consequent mutation are not binding on the rights of the present plaintiff and the same are liable to be set aside being illegal, bad in law, result of fraud and misrepresentation.”

(e) *That at the end of para No.14 of the plaint the following sentence is to be added:-*

“The suit is valued for the purposes of court fee and jurisdiction for the relief of possession at Rs.210/- @ Rs.60 per acre on which court fee of Rs.6 is affixed.”

(f) *That in the prayer clause of the plaint after the words 'for the year 1974-75' the following sentence is to be added “and now comprised in Khewat No.830 Khatoni No.1183 of revenue estate of Vill. Alewa vide Jamabandi for the year 2009-2010 and consequently for possession/joint possession of aforesaid land alongwith mesne profits @ Rs.30,000/- per acre per annum, on account of unauthorised use and occupation, from the date of filing of the suit till delivery of possession thereof to the plaintiff.”*

[5]. I have heard learned counsel for the parties.

[6]. 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.

[7]. 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.

[8]. 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.”*

[9]. The proposed amendment was sought to be made as the same was very necessary for just decision of the case and would enable the Court to decide the controversy in an effective manner. By way of amendment, clarification of the fact was sought to be made and proper relief of possession and *mesne* profits was also sought to be incorporated. The amendment would not change the nature of the suit in any manner. The suit itself is at initial stage, where no plaintiff evidence has been examined so far. Issues were framed on 19.03.2013.

[10]. In view of facts as narrated above and in the light of aforesaid proposition as laid down by the Hon'ble Apex Court in

Usha Balashaheb Swami & Ors.' case (supra), it would be just and expedient to allow the application for amendment of plaint, subject to adequate cost. Therefore, the present revision petition is allowed. Impugned order dated 03.11.2014 is hereby set aside, subject to payment of cost of Rs.20,000/-, payable to the respondent/defendants. Payment of cost shall be the condition precedent for granting indulgence in the aforesaid context by the trial Court.

November 04, 2016

*Atik***(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No