

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

**CR No.8652 of 2016
Decided on: 21.12.2016**

Hardeep Dass @ Deep Dass

....Petitioner

Versus

Kuldeep Dass Chela Gopal Dass Chela Ram Dass and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vijay Lath, Advocate
for the petitioner.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 15.11.2016 whereby application filed by the respondent/plaintiff for amendment of the plaint by invoking Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') has been allowed.

Counsel for the petitioner has submitted that in the application seeking amendment of the plaint, there is not even a whisper much less an explanation as to why the facts sought to be added by way of amendment could not be pleaded in the original suit that was filed way-back in the year 2012, therefore, proposed amendment is hit by the proviso appended to Rule 17 of Order 6 CPC. Another submission made by counsel is that as by way of the proposed amendment, the respondent/plaintiff has sought to challenge order dated 23.09.2008 passed by the Collector, Mohali and in case the proposed amendment is allowed, the same would relate back to the date of suit unless specifically ordered that it will not relate back to the date

of plaint, it would affect the defence of limitation available to the petitioner/defendant. In support of his contentions, he has referred to judgments of different High Courts ***“Kuldeep Saxena vs Additional District Judge, Room No.2, Lucknow & 4 others”***, 2016(1) ARC 209 and ***“Subhankar Sarangi and others vs Raghunath Tripathy and others”***, 2014(40) RCR (Civil) 136. With regard to question of limitation, reference has been made to judgment of the Kerala High Court ***“Subramanian vs Aboobacker Koya”***, 2004(2) RCR (Civil) 423, judgment of this Court ***“Raghvir Parshad etc. vs Chet Ram”***, 1971 Current Law Journal 612, judgment of the Delhi High Court ***“Vikram Singh Mehta vs M/s. Bajaj Auto Limited”***, 2001(2) RCR (Civil) 434 and judgment of Rajasthan High Court ***“The State of Rajasthan and others vs Rao Dhir Singh and others”***, 1972 AIR (Rajasthan) 241.

I have heard counsel for the petitioner, perused the paperbook various annexures particularly the order impugned.

Kuldeep Dass claiming himself to be Chela of Gopal Dass filed a suit for declaration that he is owner in possession of land situated in villages Fatehpur and Majri, detailed in headnote of the plaint. The instant application for amendment was filed on the premise that the plaintiff had assailed order dated 23.09.2008 passed by the Collector, Mohali being without jurisdiction but the plaintiff wants to challenge the said order being illegal, null and void, ineffective *qua* rights of the plaintiff. As a consequence, amendment was sought in headnote of the plaint to challenge the said order as well as an addition in para 2, detailed in application for amendment (Annexure P3).

After having heard counsel for the parties, in the light of application filed by the respondent/plaintiff and reply thereto by the petitioner, the trial Court by taking into consideration the averments already raised in para 2 of the plaint wherein challenge has been laid to the order dated 23.09.2008 being without jurisdiction, held that the amendment is formal in nature and no prejudice shall be caused to the defendants.

Hon'ble the Supreme Court of India, after taking into consideration the proviso appended to Rule 17 of Order 6 CPC, laid down certain factors to be taken into consideration while deciding an application for amendment of pleadings in ***“Revajeetu Builders & Developers vs Narayanaswamy & Sons & Others”***, 2010(1) RCR (Civil) 27. The twin principles which govern the law of amendment of pleadings since ages that the amendment is necessary for complete and effective adjudication of the matter in controversy and the same does not cause prejudice to the other party for which he cannot be compensated with costs were reiterated.

In the case at hand, there is no such plea raised by the petitioner that application for amendment is a *mala fide* one. A perusal of the plaint of the original suit made available during the course of hearing would make it evident that in para 2 of the plaint, there is a detailed reference to the litigation *qua* the suit land that remained pending before the revenue authorities with regard to sanction of mutation, etc. It further makes reference to the order dated 23.09.2008 passed by the Collector and in the concluding lines of the said para, it has been averred that “the Collector, Mohali passed a strange order and

without sanctioning varasat (inheritance) of Gopal Dass he had finished ownership of Gopal Dass regarding suit land and transferred the suit land in the name of Thakurdawara which is not within jurisdiction of Collector, Mohali at all and original ownership cannot be changed without order of the competent Court or without following the procedure of Transfer of Property Act in the lifetime of owner unless and until there is decision of competent Civil Court regarding change of ownership.” In para 3, it has been pleaded that on the basis of order of Collector, Mohali dated 23.09.2008, defendant No.1 is trying to dispossess the plaintiff forcibly with the help of bad elements.

As in the case at hand, the respondent/plaintiff has already assailed the order dated 23.09.2008 being the result of jurisdictional error committed by the Collector, Mohali, it is difficult to accept that by way of the proposed amendment, the respondent either wants to introduce a new cause of action much less changing nature of the suit. The respondent already having sought to challenge the order passed by the Collector, Mohali in view of averments raised in para 2, the mere fact that he has not specifically sought a declaration to get that order set-aside by alleging it to be null and void and not effective *qua* his rights can be termed to be an amendment that is formal in nature. In this view of the matter, the petitioner cannot derive any advantage to his contentions from the authorities dealing with the question of limitation. The matter would have been different had the order passed by the Collector been not challenged in the original suit and sought to be challenged for the first time by way of amendment in the year 2016, thus, the respondent/defendant could raise an issue that allowing such

an amendment without a caveat that it will not relate back to the date of suit would affect defence of limitation available to him. This apart, the question of limitation *qua* challenge to an order passed on 23.09.2008 by way of a suit filed in February, 2012 may still be open to be raised before the trial Court as the declaration has been sought after expiry of more than three years from the date of passing of the said order. In this regard, the petitioner would be at liberty to raise a plea before the trial Court either by way of pleadings or otherwise in accordance with law.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

21.12.2016
yakub

(REKHA MITTAL)
JUDGE

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