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

**Civil Revision No.192 of 2017
Date of Decision: 20.11.2017**

Om Parkash and another

.....Petitioners

Vs

Bani Singh and others

....Respondents

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

Present: Mr. Ajay Kumar Kansal, Advocate
for the petitioners.

Ms. Sheenu Shura, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. The petitioners have challenged the order dated 13.12.2016 passed by the Civil Judge (Jr. Divn.) Jind whereby application under Order 6 Rule 17 CPC for amendment of the written statement was allowed.

[2]. Plaintiffs/petitioners filed a suit for possession and mandatory injunction. The suit was contested by the defendants/respondents. The defendants denied that after decision dated 17.11.2009 of Addl. Civil Judge (Sr. Divn.) Jind, the defendants have interfered or took possession of the suit

land, rather the plaintiffs have concealed the true facts. The plaintiffs were never in possession of the suit land at any time since 29.03.1971 till date. They had never cultivated the suit property/land nor were in any cultivating possession at any stage during pendency of the previous litigation. The defendants claimed that they were in continuous, open, hostile, uninterrupted possessions as owners of the land measuring 8 *Kanals* comprised in *Rect.* No.49, *Killa* No.5 (8-0) situated in the revenue estate of the village Dariawala including the suit land comprised in *Khasra* No.49//5/1/1 (3-18) hostile to the knowledge of the plaintiffs as well as their father Inder Singh without paying any lease money, rent or *chakota* since 29.03.1971 till date. Defendants claimed their possession open, hostile to the knowledge of the plaintiffs and further claimed their hostile possession has ripened into ownership by efflux of time since 29.03.1971.

[3]. In the application for amendment of the written statement, the defendants/respondents sought to introduce the plea that on 14.01.1970 vide registered sale deed No.1472 Inder Singh (father of the plaintiffs) had sold away his land measuring 17 *Kanals* 11 *Marlas* to Ganeshi. At the instance of Dari Ram father of the defendants, said Inder Singh agreed to pre-empt the sold land through his real sister Sunehri, who was

joint owner in the *khewat*. Inder Singh and Sunehri Devi had orally agreed to give said 17 *Kanals* 11 *Marlas* of land to Dari Ram, who in turn had to bear all their litigation expenses. Dari Ram had paid the entire pre-emption money for and on behalf of said Sunehri and the possession of said pre-empted land measuring 17 *Kanals* 11 *Marlas* was handed over to Dari Ram as owners. In this way the possession of the defendants on the land in question was sought to be explained with reference to the past history on record.

[4]. The application for amendment was opposed by the plaintiffs/petitioners. The Civil Judge (Jr. Divn.) Jind by treating the proposed amendment to be an elaboration of facts already on record allowed the same vide the impugned order.

[5]. Learned counsel for the petitioners submitted that the same very plea which is sought to be introduced by way of amendment of the written statement was taken by the defendants in the suit which is ultimately pending before the High Court in RSA No.3972 of 2011.

[6]. Learned counsel by relying upon **J Samuel and others vs. Gattu Mahesh and others, 2012(2) SCC 300** contended that the defendants/respondents have failed to show knowledge and due diligence and the amendment should not have been

allowed after commencement of the trial.

[7]. I have heard the submissions made by learned counsel for the parties.

[8]. It is a settled principle of law that amendment of the written statement has to be liberally construed and has to be treated on different pedestal than that of amendment of the plaint. In case of amendment of the written statement, the defendant is entitled to take inconsistent plea and in appropriate cases even the admission made on earlier occasion can be allowed to be withdrawn. The amendment of written statement stands on different pedestal and the Court is not obligated to go into the correctness and falsity of the case of the parties at this stage. It is mandatory on the part of the Court to allow all *bona fide* amendments which are necessary for real determination of the issues. 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 between the parties. Each case has to be tested on the basis of its own merits.

[9]. In the instant case, the earlier plea in the context of possession of the defendants from 1971 or prior thereto is the same. By way of proposed amendment, the defendants have sought to elaborate the nature of their possession over the suit

land on the basis of sale made by original owner which was got pre-empted through Sunehri after bearing the litigation expenses by father of the defendants namely Dari Ram. The correctness or falsity of the amendment cannot be commented upon at this stage. On the ground of elaboration of facts in support of earlier plea, written statement can be allowed to be amended. Reference can be made to **M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., 2001(4) R.C.R. (Civil) 362.**

[10]. 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.”

[11]. The ratio in **Usha Balashaheb Swami & Ors'** case (supra) was followed by this Court in **Mohinder Singh & Anr. vs. Reshma Devi & Ors., 2017(3) Law Herald (P&H) 2234** and **M/s Vikram Electric Equipment Pvt. Ltd. vs. Chankya Education Society, 2017(3) Law Herald (P&H) 2433.**

[12]. The amendment in written statement which is sought to be incorporated in my considered opinion is the most innocuous pleading which does not tantamount to altering the nature of the plaint much less withdrawing any stand made in the earlier written statement, rather it would be an elaboration of the facts already pleaded in original written statement and the plaintiffs would be at liberty to cross-examine the defendants. The amendment sought to be incorporated is only explanatory and elucidated in nature, therefore, the expression 'despite exercise of due diligence' is not attracted in strict sense. The veracity of the correctness would be appreciated by the trial Court at the

relevant stage. At this stage, the proposed amendment cannot be held to be *mala fide* by any stretch of imagination. The indulgence granted by the trial Court cannot be found to be illegal or perverse.

[13]. In view of aforesaid observation, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

November 20, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No