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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4568 of 2016 (O&M)
Date of Decision : 25.10.2017

JAGDISH

....PETITIONER

VERSUS

BALA AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Rakesh Nehra, Advocate for the petitioner.

Mr. J.S. Cooner, Advocate for respondent No.1.

B.S. WALIA, JUDGE (ORAL)

Revision petition has been filed challenging order dated 13.05.2016, passed by the learned Additional Civil Judge (S.D.), Gohana, whereby application filed by the defendant petitioner under Order VI Rule 17 CPC for amendment of written statement was dismissed.

[2] Brief facts of the case as set up by the defendant petitioner are that one Teku s/o Sukh Lal purchased 4 acres of land in the year 1963-64 from Puarn son of Net Ram in the year 1981. Dharampal s/o Puran s/o Net Ram filed a suit for pre-emption against Teku and the same was decreed in the year 1996. Appeal filed by Teku was dismissed in the year 1989 as was RSA No.2410 of 1989 on 07.05.2010 and SLP vide

order dated 01.10.2010. Pursuant to the dismissal of the SLP, Dharampal took possession of the land in question by filing execution petition in the year 2011.

[3] While Teku was in possession of land, Shiv Kumar and other co-sharers of Teku filed a suit for partition as well as for joint possession of the properties in the hands of Teku in the year 2004 in which stay was granted by the learned trial Court against alienation of the property in question. During the operation of the stay orders, Teku sold part of the land to one Bala w/o Balbir Singh i.e. 10 kanals 2 marlas vide sale deed No.122 dated 09.04.2007 and 4 kanals 10 marlas vide sale deed No.3641 dated 16.11.2009. However, pursuant to orders dated 10.08.2010 in Civil Revision No.6160 of 2009, Bala was impleaded as party defendant to the suit filed by Shiv Kumar and others against Teku. Amended plaint was filed on 13.04.2011 by adding Bala as a defendant. Bala was served in the said suit on 01.02.2011 and filed written statement in the said suit on 19.04.2011.

[4] On account of dismissal of SLP against the decision of this Court in RSA No.2410 of 1989 the suit filed by Shiv Kumar and others was dismissed as withdrawn on 11.01.2012 since Dharampal son of Puran had in pursuance of the dismissal of the SLP against the decision dated 07.05.2010 in RSA No.2410 of 1989, got possession of the land. During the pendency of the civil suit filed by Dharampal against Teku, Teku sold the land as per details given above to Bala vide sale deed dated 09.04.2007 and 16.11.2009 allegedly in knowledge of stay having been granted against alienation of the properties in the suit filed by Shiv

Kumar and other co-sharers against Teku. Two contempt petitions were filed by Shiv Kumar and others against Bala, one on 30.07.2007 and the other on 15.06.2010. It needs noticing here that in the first contempt petition filed on 30.07.2007, Bala filed reply in respect thereto on 26.11.2007. After the withdrawal of the suit filed by Shiv Kumar and other co-sharers against Teku and Bala on 11.01.2012, Bala filed a suit against Teku on 20.01.2012 in which Teku filed written statement on 11.05.2012. However, Teku died during the pendency of the suit on 05.07.2012 whereupon Jagdish i.e. son of Teku i.e. petitioner herein and others were impleaded as LR's of Teku vide order of the learned trial Court dated 11.05.2015. Out of the 13 LR's of deceased Teku, only his son i.e. petitioner herein has come up before this Court, challenging the impugned order dated 13.05.2016 whereby his application for amendment of written statement to bring on record the earlier litigation with Bala was rejected.

[5] Learned counsel for the petitioner contended that the petitioner was impleaded as LR on 11.05.2015 and had merely sought permission to amend the written statement, so as to clarify the stand as has been taken in the written statement filed by his father Teku to bring on record, history of the suit for pre-emption, filed by Dharampal against his father and in which Dharampal had succeeded upto the Hon'ble Supreme Court as also the civil suit filed by the brothers of Teku, i.e. Shiv Kumar and others, against Teku as well as the impleadment of Bala in the said suit, besides filing of two contempt petitions by Shiv Kumar and others against Bala on account of her having purchased the properties

in question, as also granting of the stay orders restraining the alienation of the properties in question in the civil suit filed by Shiv Kumar and other co-sharers.

[6] Learned counsel contended that prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings and the general principle that amendment of pleadings cannot be allowed so as materially alter or substitute cause of action or the nature of claim applies to amendments of plaint and has no applicability in the principles relating to amendment of the written statement. Therefore, addition of a new ground or defence or substituting 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 though in the plaint the same may be objectionable.

[7] Learned counsel contends that in the case in hand it is not even the case of the petitioner that he was trying to set up a new case or altering or substituting a new cause of action, the case was only of clarification of the facts, by way of explaining the history of the litigation instituted by Dharampal son of Puran against his father Teku as well as the civil suit filed by Shiv Kumar and other co-sharers against his father Teku as well as subsequent impleadment of Bala as well as the filing of the contempt petitions by Shiv Kumar and others against Bala and that no prejudice would be caused to the respondents in the eventuality of the application being allowed.

[8] Learned counsel relied on the decision of the Hon'ble Supreme Court in 'Usha Balashaheb Swami and others versus Kiran

Appaso Swami and others', 2007(5) SCC 602 in support of his plea.

Relevant extract of the aforementioned decision is reproduced hereunder :

“ 21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.⁷ this Court observed

“that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event”.

In that case this Court also held

“that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice”.

22. 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] Learned counsel further contended that the learned trial Court had taken an unduly technical and pedantic approach in rejecting the claim despite taking note of the fact that previous litigation has been mentioned in the original written statement.

[10] Learned counsel further contended that it is also factually incorrect that the petitioner was adopting delaying tactics and that the proposed amendment was necessary in order to have a proper adjudication of the suit. As far as the question of filing of the proposed amendment beyond the commencement of the trial is concerned, learned counsel contended that the proposed amendment was necessitated on account of death of the defendant and impleadment of the petitioner herein as LR of defendant Teku in May, 2015 and that the application for

permission to amend the written statement had been filed at the earliest after being impleaded as the LR of deceased Teku besides the respondent plaintiff could be compensated by payment of costs.

[11] Learned counsel for the respondents, on the other hand, submits that the petitioner has stepped in to the shoes of Teku, therefore he had no independent right, whatsoever, to file an amended written statement, besides last opportunity had already been granted to the plaintiff to lead evidence and the case was pending before the learned trial Court awaiting recording of plaintiffs evidence in view of proceedings having been stayed by the Hon'ble High Court vide orders dated 19.01.2017.

[12] I have considered the submissions of learned counsel for the parties and am of the considered view that since no new plea is being raised and the amendment is only clarificatory in nature inasmuch as amendment is sought to be made only to give history of the earlier litigation between the parties which already stands disclosed in the written statement, therefore, no prejudice would be caused if the clarificatory amendment is permitted, particularly in view of the fact that the evidence of the plaintiff has yet to be concluded and the proceedings in the civil suit stand stayed by virtue of order of this Court dated 19.07.2017.

[13] In the circumstances, the revision petition is accepted. Impugned order dated 13.05.2016 is set aside, petitioners application for amendment of the written statement so as to incorporate a clarification about the earlier two rounds of litigation etc disclosed in the written

statement filed by Teku, is allowed subject to payment of Rs.10,000/- as costs to the respondent plaintiff.

(B.S. WALIA)
JUDGE

October 25, 2017
rajneesh

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