

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.475 of 2015
Date of decision:15.3.2017**

Smt.Om Piari

...Petitioner

Versus

Joginder and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Nitin Jain, Advocate for the petitioner.
Mr.Sumit Sangwan, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, at the hands of defendant, filed under Article 227 of the Constitution of India, is directed against the order dated 12.1.2015 passed by the learned trial Court, whereby application under Order 6 Rule 17 of the Code of Civil Procedure, moved by the plaintiffs, seeking amendment in his plaint, was allowed.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that present petitioner is defendant No.2 in the civil suit for declaration filed by respondents No.1 to 9-plaintiffs. Respondent No.1 is defendant No.1 in the civil suit. Respondents No.11 and 12 are defendants No.3 and 4. It is very necessary to note as to what was the nature of suit initially filed and what type of reliefs were being sought by the plaintiffs-respondents.

Heading of the suit, available at pages 43 and 44 of the paper-book, which deserves to be noticed here, reads as under:-

*“Suit for declaration that plaintiffs are owners of (a)
land measuring 22 kanal 6 marlas comprised in Killa*

No.28//23 (7-11), 24 (7-11), 25 (7-4) min, Khewat No.204/195/1, Khatoni No.261, as per jamabandi, (b) land measuring 23 kanal 12 marlas comprised in Killa No.38/3 (8-0), 4 (8-0), 5 (7-12) min, Khewat No.297/289, Khatoni No. 368 and 370, as per jamabandi for the year 2004-05 of village Kaliyana, Tehsil Charkhi Dadri, District Bhiwani, in equal share and in possession thereof and the entries in the jamabandi wherein the suit land is shown to have been allotted are wrong and liable to be corrected in favour of the plaintiffs and mutation No.2840 entered on 24.08.2009 attested on 09.09.2009 in favour of Chandgi son of Budh Ram, resident of Mandoli on the basis of sale certificate No.161 for a sale consideration of Rs.3000/- and mutation No.2848 regarding inheritance of Chandgi in favour of defendant No.1 and mutation No.2858 regarding sale in favour of defendant No.2 and sale deed No.2908 dated 11.11.2009 are illegal, against law, facts and the position existing at the spot and the same are not binding on the rights of the plaintiffs and the aforesaid three mutations and the sale deed are liable to be set aside and liable to be corrected in favour of the plaintiffs.”

The nature of amendment sought by the plaintiffs in their plaint, as noticed by the learned trial Court in para 2 of its impugned order, reads as under:-

“The brief facts of the application are such as that the applicant wants to get amended the head note as well as the prayer clause of the plaint to the effect that “consequential relief of permanent injunction to the effect that the defendants are required to be restrained from causing interference into peaceful use and possession of the plaintiffs over the suit property and dispossessing them forcibly in an unlawful manner”.

When specifically and repeatedly asked to point out as to what kind of prejudice was apprehended by the defendants by way of above-said

amendment in the plaint and how the nature of suit was going to be changed, learned counsel for the petitioner had no answer and rightly so, it being a matter of record.

After hearing learned counsel for the parties and going through the peculiar facts and circumstances of the case as well as the law laid down by this Court, it can be safely concluded that the learned trial Court was well within its jurisdiction to pass the impugned order, which has been found duly supported by sound reasons. Relevant part of the impugned order reads as under:-

“Therefore, omission of making prayer regarding permanent injunction in head note as well as prayer clause is inadvertent. Further without seeking this relief specifically the suit cannot be disposed of completely as per law and it is only possible if the proposed amendment is allowed. Moreover, any amendment clarifying case of party should be allowed at any stage of suit particularly when no further evidence is required to be produced. Reliance in this regard is placed upon law laid down by Hon'ble Punjab & Haryana High Court in civil case titled as Lal Chand Saini Vs. Municipal Committee Mahendergarh 2010(4) RCR Civil 268. The proposed amendment also will not in any manner cause an adverse effect to the respondent/defendant because the prayer of the plaintiffs regarding permanent injunction is already within their knowledge and notice since the filling of their written statement as well as reply to the stay application. Hence, the application in hand stands allowed.”

Further, official defendants No.3 and 4, i.e. State of Haryana and Tehsildar, Sale Custodian, Bhiwani (respondents No.11 and 12 herein) took the following specific and categoric stand in para 1 of preliminary submissions, in filing their written statement:-

“That the suit land comprised in Khasra No.38//3-4-5 & 28//23-24-25 measuring 45IK-18M situated at Kaliana, was auctioned by the Rehabilitation Department on 10-11-1964 in the restricted auction in the name of Sh. Chandgi Ram s/o Sh. Budh Ram, for a sum of Rs.3000/- in the restricted auction. The auction purchaser deposited the whole amount by Book transfer after taking loan from the Revenue Department and the sale deed was issued in the name of the purchaser but he did not get the same registered with the sub Registrar within the prescribed period i.e. 120 days and the sale deed became invalid after the said period as per information the auction purchaser did not deposit the amount of installments with the Revenue Department, on account of repayment of loan and the revenue Department, in the year 1975 resold the suit land in the name of one Sh. Mool Chand for a sum of Rs.3950/-.

The entire case of the defendant-petitioner is based on a sale-deed, allegedly executed in their favour by the legal representatives of Chandgi Ram son of Budh Ram. However, once the sale-deed in favour of Chandgi Ram had become invalid for want of its registration within the prescribed period and also for want of payment of instalments by Chandgi Ram to the revenue department, followed by resale of the suit land in the year 1975 by the revenue department in the name of Mool Chand, vendor of defendants No.1 and 2 would have no authority to execute the sale-deed in favour of defendants No.1 and 2. However, this issue will be decided by the learned trial Court after going through the respective evidence of the parties, without having been influenced by any observations made by this Court. So far as the impugned order passed by the learned trial Court, allowing the application for amendment of plaint, is concerned, it has not been found suffering from any patent illegality and the same deserves to be upheld.

The contention raised by the learned counsel for the petitioner

that suit for declaration filed by the plaintiffs was based on the plea of adverse possession, has been found to be wholly misconceived, in view of the above-said headnote of the plaint. Neither the nature of suit is going to be changed nor any kind of prejudice is going to be caused to the petitioner-defendant, by passing of the impugned order.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to decide the *lis* on merits instead of technicalities. Both the parties to the litigation must be granted reasonable opportunities to put up their best case before the court, so as to enable the court to arrive at a judicious conclusion, with a view to do complete and substantial justice between the parties. That is what was sought to be done by the learned trial Court, while passing the impugned order and the same deserves to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts, including this Court:-

1. ***L.J.Leach and Co. Ltd. and another versus Messrs. Jairdine Skinner and Co. 1957 AIR (SC) 357;***
2. ***Sajjan Kumar versus Ram Kishan 2005(13) SCC 89;***
3. ***Usha Devi versus Rijwan Ahamd and others 2008(3) SCC 717;***
4. ***Prithi Pal Singh and another versus Amrik Singh and others 2013(9) SCC 576;***
5. ***Raghubir Singh and ors. versus Gurnam Kaur 1990 PLJ 534 (P&H);***
6. ***Foremost Diaries Ltd. versus M/s Banarsi Dass Amar Nath 1992(1) PLR 227 (P&H);***
7. ***Ram Niwas Vs. Bramchari and others, 2009 (3) PLJ 716 (P&H);***

8. *Joseph Vs. Sivaraman Nair, 2001 (1) RCR (Civil) (1) (Kerala)*

Learned counsel for the petitioner placed reliance on the following judgments:-

1. **Vidyabai and others Vs. Padmalatha and another, 2009 (2) SCC 409;**
2. **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. & others, 2006 (12) SCC 1;**
3. **Gurudwara Sahib Vs. Gram Panchayat Vilage Sirthala and another, 2014 (1) SCC 669;**
4. **Kaliaperumal Vs. Rajagopal and another, 2009 (4) SCC 193;**
5. **Bhim Singh and others Vs. Zile and others, 2006(3) RCR (Civil) 97 (P&H);**
6. **Mahinder Pal and others Vs. Prem Kumar and others, 2005(3) RCR (Civil) 828 (P&H);**
7. **Banarsi Dass Vs. Neel Kanth and others, 2007(2) RCR (Civil) 126 (P&H);**
8. **Jasvir Singh and another Vs. Pritam Dass Chela Bhagwan Dass Chela Puran Dass and others, 2016(1) PLR 498 (P&H);**
9. **Jhang Biradari Housing Residents Society Vs. Bharat Bhushan Sachdeva and others, 2015 (5) RCR (Civil) 849 (Delhi);**
10. **Kamala and othes Vs. Ammanna Rai and others, AIR 1961 Kerala 153.**

So fas as the above-said judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being clearly distinguishable on facts. It is the settled principle

of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides.

What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

*Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.*

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are

neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered

that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

As noticed hereinabove, suit of the plaintiffs-respondents has not been found based on the plea of adverse possession, as sought to be argued by the learned counsel for the petitioner. This primary contention raised by the petitioner has been falsified by the above-said headnote of the plaint and prayer made by the plaintiffs-respondents. Further, during the course of hearing, learned counsel for the petitioner could not point out any

patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant civil revision petition stands dismissed, however, with no order as to costs.

15.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No