

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

**CR No.5853 of 2015(O&M)  
Date of Decision: 07.12.2017**

**Baljeet @ Baljeet Singh**

**.....Petitioner**

**Vs**

**Chander and others**

**.....Respondents**

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

Present: Mr. Shailendra Jain, Sr. Advocate with  
Mr. Satyendra Chauhan, Advocate  
for the petitioner.

Mr. Sanjay Vij, Advocate  
for respondents No.1 to 3.

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**RAJ MOHAN SINGH, J.(Oral)**

[1]. Petitioner has challenged the order dated 17.08.2015 passed by the Trial Court whereby application under Order 6 Rule 17 CPC for amendment of the plaint was declined.

[2]. Earlier a suit for permanent injunction was filed by the plaintiff/petitioner. In the written statement, the factum of Will was disclosed by the defendants therein. Plaintiff withdrew the said civil suit and then filed the present suit for declaration for setting aside the Will dated 01.09.2003 with consequential relief

of permanent injunction.

[3]. Only Haveli of deceased Deep Chand is in dispute in the present suit. At the stage of leading plaintiff's evidence, an application under Order 6 Rule 17 read with Section 151 CPC came to be filed for amendment in the plaint. Plaintiff sought to amend para No.5 and prayer clause to the effect that in case, the Court comes to the conclusion that the Will dated 01.09.2003 is void and is liable to be set aside, in such an eventuality, partition of suit property between the plaintiff and defendant No.1 being brother/legal heirs of deceased Deep Chand by way of separate possession of their respective shares in the suit property be done. The prayer clause was also sought to be amended thereby making prayer to the effect that the decree for partition by way of separate possession be passed in favour of the plaintiff and against defendant No.1 in respect of the suit property. For ready reference, para Nos.1 and 2 are reproduced hereasunder:-

*“1.That the applicant/plaintiff has filed a suit for setting aside Will bearing Vasika No.298 dated 01.09.2003 for ancestral property and no Will can be executed by the deceased Deep Chand during his life time in respect of ancestral properties, therefore, void ab initio document and do not operate any right, title, interest in favour of defendants No.2 and 3 under bonafide belief that relief of partition between plaintiff and defendant No.1 two*

*brothers will arise only after setting aside the Will and the cause of action for partition is different and separate in which defendants No.2 and 3 necessary parties. In any case this Hon'ble Court has ample power to grant any consequential relief arising out of the facts of the case.*

*2. That the defendants have filed written statement in the present case raising objections about the relief of partition of the suit property implying they are well aware about the fact that Will is liable to be set aside in respect of ancestral property, therefore, though not necessary but for the sake of abundant caution, the applicant do hereby made prayer for amendment of plaint in following manner.”*

[4]. Evidently, the petitioner himself has pleaded that the cause of action for partition is different and separate in which defendants No.2 and 3 are necessary parties. In the same breath, the petitioner has also pleaded that though the amendment in question is not necessary, but for the sake of all abundant caution, he seeks to introduce proposed amendment in the plaint.

[5]. Learned counsel for respondents No.1 to 3 vehemently opposed the prayer on the strength of **Kenchegowda (since deceased) by legal representatives Vs. Siddegowda @ Motegowda, 1994(3) PLR 282** and contended that in a suit for

declaration and permanent injunction, decree for partition cannot be granted on mere application for amendment because causes of action are different and distinct reliefs are involved.

[6]. Involvement of all the co-sharers would be a moot point. Apparently, as per pedigree table as shown in the plaint, legal heirs of Raghunath and Chandro have not been shown. According to the learned counsel for respondents No.1 to 3, brothers of Deep Chand have their own families and their legal representatives have not been arrayed as party defendants in the suit. In addition to that, all the co-parcenary properties in the hands of Deep Chand have not been included in the suit.

[7]. It is a settled principle of law that all the necessary and *bona fide* amendments are to be allowed. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for amendment is that it should not be unjust and result in prejudice against the opposite party. The second condition is that all the necessary amendments for the purposes of determining the real issue between the parties should be allowed. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment

should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[8]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not satisfied, the amendment cannot be allowed. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way it is intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment following principles are required to be taken into consideration:-

- a. Whether the amendment sought to be made is imperative for effective adjudication of the matter?
- b. Whether the amendment is *bona fide* or *mala fide*?
- c. The amendment should not cause such prejudice to the opposite party which cannot be compensated in terms of adequate cost.
- d. Whether the proposed amendment changes the nature and character of the suit?

As a Rule the Court should reject such amendments if fresh suit on intended cause of action is barred by limitation on the date of filing of application of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In ***Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27***, the Hon'ble Apex Court highlighted the aforesaid principles

to be followed meticulously.

[9]. In ***Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481***, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed if the same subserves the cause of justice and avoids further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite

party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in ***J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.***

[10]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in ***Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965***, held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[11]. In the present case, it can be noticed that the petitioner himself has projected the case of different causes of action for partition as well as the present suit. Petitioner himself has pleaded that though the amendment is not necessary, but for the sake of all abundant caution, the same is sought to be introduced.

[12]. In my considered opinion, no such relief can be granted on the basis of pleadings made by the petitioner in the

application. Finding no merits in the revision petition, the same is accordingly dismissed.

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|---------------------------|-------------------|
| 07.12. 2017               | (RAJ MOHAN SINGH) |
| Prince                    | JUDGE             |
| Whether speaking/reasoned | Yes/No            |
| Whether reportable        | Yes/No            |