

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

CR No. 6104 of 2012(O&M)

Date of decision: 8.9.2017

Sudesh Kumari

....Petitioner

VERSUS

Dharam Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.

Mr. Anil Shukla, Advocate for the respondents.

REKHA MITTAL, J.

CM No.18427-CII of 2015

Heard.

Allowed as prayed for.

Annexure P-9 to P-12 are taken on record subject to just exceptions.

Disposed of accordingly.

CM No.23782-CII of 2016

Heard.

Allowed as prayed for.

Annexure P-13 and P-14 are taken on record subject to just exceptions.

Disposed of accordingly.

CR No.6104 of 2012

The present petition lays challenge against order dated 04.10.2012 (Annexure P-5) passed by the Civil Judge (Junior Division),

Dhuri whereby application for amendment of rejoinder/replication to the written statement filed by the petitioner has been dismissed.

Sudesh Kumari – petitioner filed a civil suit for declaration that she is owner of 1 biswa 15 biswansi being 1/4th share of land measuring 0-7 biswa situated at Dhuri on the basis of registered sale deed No.1643 dated 24.09.1998. It was also prayed that the registered sale deed No.1871 dated 26.09.2008 executed by defendant No.1 in favour of defendants No.2 and 3 regarding the suit property is null and void. The petitioner also sought consequential relief of possession as well as permanent injunction restraining defendants No.2 and 3 from alienating, mortgaging or disposing of the suit property in any manner whatsoever.

The two sets of defendants filed their separate written statements contesting claim of the petitioner. In the written statement filed by defendant No.1, he has raised several issues as to how he became owner of the suit property with the averments that Vijay Kumar, husband of the petitioner and vendor was neither the owner nor in possession of the suit property, therefore, he was not in a position to hand over physical possession of the suit property to the petitioner/plaintiff and the plaintiff never remained in possession of the same.

The petitioner filed detailed replication (Annexure P-1) to the written statement filed by defendant No.1 and (Annexure P-11) to that of defendants No.2 and 3. On the basis of pleadings of the parties, the trial Court framed the issues. The petitioner examined several witnesses and thereafter filed an application for permitting her to prove the Wills dated 15.08.1964 and 04.02.1994 by way of secondary evidence but the same was dismissed vide order dated 30.09.2010. Thereafter, the present application was filed seeking permission to amend rejoinder to the written

statement of defendant No.1 with the averments that due to inadvertence, the plaintiff did not mention that mutation No.25493 and 25504 were sanctioned on the basis of Wills dated 15.08.1964 and 04.02.1994, respectively.

Counsel for the petitioner has submitted that in the replication/rejoinder filed by the petitioner to the written statements, it has been specifically mentioned in para 1 on merits that after the death of Chet Ram, Sukh Ram son of Chiranji Lal became owner and in possession of the suit property regarding which mutation No.25493 was sanctioned in the name of Sukh Ram. After the death of Sukh Ram son of Chiranji Lal, Vijay Kumar son of Sukh Ram became owner and in possession of the suit property regarding which mutation No.25504 was sanctioned in his name and then Vijay Kumar son of Sukh Ram alienated the suit property vide sale deed No.1643 dated 24.09.1998 in favour of plaintiff Sudesh Kumari and handed over the possession. It is argued with vehemence that mutation No.25493 in favour of Sukh Ram was sanctioned on the basis of Will Khangi dated 15.08.1964 as is evident from Annexure P-13. Similarly, on the death of Sukh Ram son of Chiranji Lal, mutation in respect of his 1/4th share in area measuring 7 biswas was sanctioned in favour of Vijay Kumar son of Sukh Ram on the basis of Will Khangi dated 04.02.1994. According to counsel, as the petitioner has already pleaded both the mutations sanctioned in favour of Sukh Ram and Vijay Kumar and the mutations sanctioned by the revenue authorities in discharge of their official functions clearly make reference of the mutations being sanctioned on the basis of Wills, in case the proposed amendment is allowed, it would not amount to introducing a new fact. It is further argued that since there is a serious contest with regard to ownership and possession of the suit

property, a serious prejudice is likely to be caused to the petitioner in case she is not permitted to amend the replication/rejoinder to plead the Will dated 15.08.1964 executed by Chet Ram in favour of Sukh Ram and dated 04.02.1994 by Sukh Ram in favour of Vijay Kumar. In absence of the petitioner specifically pleading the Wills, she may not be allowed to adduce evidence with regard to the Wills in question and her apprehension gets substantiated from the fact that the application for adducing secondary evidence in regard to the aforesaid Wills has been dismissed by the trial Court on this account.

Counsel has further argued that the proposed amendment would neither change nature of the suit nor the relief claimed nor would operate to cause a prejudice to the respondents for which they cannot be compensated with costs. The last submission made by counsel is that rules of procedure are handmaid to administration of justice and the same are to be used for enhancing the cause of justice and not to thwart the same. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others**, 2010(1) RCR (Civil) 27.

Counsel for the contesting respondents, on the contrary, has supported the impugned order with the submissions that the proposed amendment is clearly barred by the proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure, 1908 (in short 'the Code'). The petitioner had already examined many witnesses before she filed the application for amendment of the replication/rejoinder. It is further argued that previously the petitioner filed an application for permission to lead secondary evidence to prove Wills dated 15.08.1964 and 04.02.1994 and the same was dismissed by the trial Court vide order dated 30.09.2010. The order

passed by the trial Court dismissing application for permission to lead secondary evidence has not been challenged in appropriate proceedings and has attained finality. It is further argued that in case the petitioner is allowed to amend the rejoinder, it may nullify the effect of order dated 30.09.2010 (Annexure P-3) and the same is not permissible.

I have heard counsel for the parties, perused the paper-book particularly the various annexures appended with the petition.

Before advertng to the submissions made by counsel for the parties, it is appropriate to recapitulate the legal position for amendment of pleadings even after proviso to Rule 17 of Order 6 of the Code was appended by way of amendment in the Code in the year 2002. Hon'ble the Supreme Court in **Revajeetu Builders' case** (supra) has laid down certain principles to be kept in view while dealing with an application for amendment of pleadings. A relevant extract from para 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

Perusal of the aforesaid extract leaves no manner of doubt that proviso appended to Rule 17 by way of amendment does not create a complete bar against allowing an application for amendment of the pleadings. The amendment of a plaint can be disallowed if it changes nature of the suit fundamentally or constitutionally or the amendment would introduce a claim which is barred by limitation or the amendment would result in such a prejudice to the contesting party for which cost is not the remedy.

In the case at hand, the petitioner asserted her claim to be owner of the suit property on the basis of sale deed executed in her favour by Sh. Vijay Kumar, her husband. In the replication, she has given a detailed account as to how Sukh Ram father of Vijay Kumar became the owner and in possession of the suit property in regard whereof mutation No.25493 was sanctioned in favour of Sukh Ram and further Vijay Kumar having become owner and in possession of the suit property on the death of Sukh Ram in respect of which mutation No.25504 was sanctioned. The petitioner has specifically pleaded both the mutations sanctioned in favour of Sukh Ram and Vijay Kumar in para 1 of the replication on merits. Perusal of the mutations (Annexures P-13 and P-14) would make it evident that these mutations were sanctioned on the basis of Wills dated 15.08.1964 and 04.02.1994 respectively. Under the circumstances, I find merit in contention of the petitioner that by way of the proposed amendment, the petitioner does not intend to introduce a fact which was alien to the earlier pleadings. Equally true is that the petitioner neither

wants to change nature of the suit nor the cause of action much less the relief claimed. No such plea has been raised by the respondents that the proposed amendment is actuated by malice or the application is not bona fide. Counsel for the respondents has failed to advance any meaningful arguments that the proposed amendment would cause such a prejudice to the respondents/defendants for which they cannot be compensated with costs. When the facts and circumstances of the present case are examined in the light of enunciation laid down in **Revajeetu Builders' case** (supra), I find merit in contentions of the petitioner that delay in filing the application itself cannot be allowed to stand in the way of the petitioner to seek amendment when admittedly the respondents can well be compensated with costs for the delay. The trial Court failed to examine the matter in right perspective and has committed an error apparent on the face of record by holding that the amendment is not necessary for just decision of the case. As a matter of fact, in case the petitioner is not allowed to plead the Wills dated 15.08.1964 and 04.02.1994 and prove these Wills in accordance with law, she may not be successful in establishing her plea that previously the suit property was owned by Sukh Ram and Vijay Kumar, predecessors in interest of the petitioner. In view of the above, impugned order cannot be allowed to sustain and ordered to be set aside.

For the foregoing reasons, the petition is allowed. The application for amendment of the plaint is allowed subject to payment of costs of Rs.10,000/-. It is clarified that after amendment of the rejoinder/replication, in case the petitioner files an application for proving the Wills by way of secondary evidence, the same shall be decided by the trial Court in the changed scenario, without being influenced by the earlier

order in this regard. However, nothing stated hereinbefore shall cause prejudice to either of the parties during trial.

SEPTEMBER 8, 2017

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

(REKHA MITTAL)

JUDGE

yes/no

yes/no