

CR No. 6444 of 2016 (O&M)

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HIGH COURT CHANDIGARH

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

CR No. 6444 of 2016 (O&M)

Date of Decision: December 16, 2017

Surinder Kaur

...Petitioner

Versus

Harbhajan Lal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S. Lalli, Advocate
for the petitioner.

Mr. Prateek Pandit, Advocate
for respondent no.1.

ANITA CHAUDHRY, J.

This petition is directed against the order dated 05.09.2016, passed by the Additional District Judge, Jalandhar who dismissed the application filed by the petitioner seeking amendment in the written statement.

Harbhajan Lal had filed a suit for mandatory injunction and for directions to the defendants to hand over the vacant possession of the room on the ground floor and some portion occupied by them on the first floor which was exclusively owned by him. This property was allotted to him by the Jalandhar Improvement Trust in 1980. It was pleaded that the portion in their possession was given on oral license. It was pleaded that he had disowned defendants no.1 & 2 in 2008 on account of their bad behaviour and the licensee was terminated. They had assured to vacate

the property in February 2009 but had failed to do so. It was pleaded that he was dragged into frivolous litigation with an intention to grab the property.

The suit was filed in 2009. The defendants filed their written statement in January 2010 and took the plea that the property was joint Hindu family property. It was also pleaded that they had spent money from their pocket for purchase and construction and the property was ancestral.

During the pendency of the appeal, the defendants moved an application for framing additional issue that it was the shared house hold of defendant no.2 and they could not be evicted from the property. The appellate Court dismissed the application holding that issue could not be framed and the Court had to see whether the defendants were in possession of the property in the capacity of the licensee or any other capacity. The defendants aggrieved with the order filed a revision bearing No. CR-6631-2014 but that petition was withdrawn and the following order was passed:-

“Counsel for the petitioner seeks withdrawal of this petition with liberty to take all the pleas taken here in this petition before the lower court and further prays that the observations made in the impugned order may not come in the way of the petitioner.

As prayed, dismissed as withdrawn with liberty aforesaid.

However, any observations made in the impugned order would not come in the way of the petitioner at the time of adjudication of substantive rights of the parties.”

The trial Court dismissed the suit though it held that it was the self acquired property of the plaintiff but held that the defendants could not be evicted as defendant no.2 had a right of residence in the property and it could not be denied to her.

Both the plaintiff and defendant no.1 i.e. husband of Surinder Kaur filed an appeal and Surinder Kaur was arrayed as a proforma respondent. The appeal was filed in 2014. Two years later the proforma respondent i.e. daughter-in-law moved an application for amendment of the written statement to take a plea that the property in question was a shared house hold qua her and she may be permitted to amend the written statement. It was pleaded that inadvertently the plea was left to be pleaded in the written statement believing bonafidely that the legal pleas need not be raised but the evidence had already come on the file and they were not to lead any additional evidence and they be permitted to amend the written statement.

The plaintiff filed the reply to the application moved by defendant no.2 and took the plea that the house in question was not a shared matrimonial home and it was the self acquired property of the father-in-law and she could be evicted in due course of law for which he had already approached the Court.

The First Appellate Court before whom the application had been filed dismissed the application and para 9 reads as under:-

Respondent no.2 had filed the application that in the written statement they have not mentioned the fact that it is a

shared house hold of respondent no.2. Learned counsel for the applicant stated that he had not mentioned these facts in the written statement, so he wants to amend the written statement. He also pointed out the judgment and decree passed by the learned lower court in which it has been mentioned that it is a shared house hold of the applicant. On the other hand, appellant stated that it is not a shared house hold of respondent no. 2. He further stated that present suit was filed on 11.04.2009 and thereafter it was decided on 31.10.2014. He further stated that during these more then 5 years, respondents had not filed any such application. He further stated that when appeal was filed, then respondents appeared and they have not filed any such application and when appeal was fixed for arguments, then they filed present application just to prolong the matter. He also stated that all the facts were in the knowledge of the respondents, but earlier they have not filed any such application. So it is clear that Harbhajan Lal had filed the suit for mandatory injunction in the learned lower court on 11.04.2009. Thereafter, respondents appeared and they

I have heard counsel of both the sides.

The submission on behalf of the appellant is that amendment in the written statement can be allowed at the appellate stage and they can raise even new pleas and there is no prohibition and has referred to the judgment of the Apex Court rendered in 1979. While relying upon ***Ishwasrds Vs. The State of MP and others 1979 AIR (SC) 551, Prithi Pal Singh and another Vs. Amrik Singh and others 2014(1) RCR (Civil) 327, North Eastern Railway Administration, Gorakhpur Vs.***

Bhagwan Das (D) by LRs 2008(3) RCR (Civil) 165, Revajeetu Builders

& Developers Vs. Narayanaswamy & sons * ors. 2010(1) RCR (Civil)

27, Smt. Preeti Satija Vs. Smt. Raj Kumar and another RFA(OS)

24/2012 (O&M) D.O.D. 15.01.2014 (Delhi High Court) and Navneet

Arora Vs. Surender Kaur and others FAO (OS) 196/2014 D.O.D.

10.09.2014 (Delhi High Court), it was urged that the plaintiff would not be prejudiced and they were not to lead any evidence and they had raised this plea as an abundant caution.

The submission on behalf of the respondent is that no appeal was filed by the daughter-in-law and she wants to amend the written statement. It was urged that she did not join her husband in filing the appeal and the appeal was filed in 2014 and the case was pending before the trial Court for over 5 years and they had filed an application for framing of additional issues though there were no pleadings and the intention the party is to delay the disposal and the plaintiff wants to live in peace in his own house and the trial had been held up for a number of years on account of the litigation and the miscellaneous applications filed by the son or the daughter-in-law.

I have gone through the judgments referred to by the petitioner. ***Prithi Pal Singh's*** case (supra) as well as ***Navneet Arora's*** case (supra) does not relate to the amendment. They deal with the question of shared house hold. In this petition we are only concerned whether the defendants can be allowed to amend the written statement at the first appellate stage. The judgments which have been referred to by

the appellant, all relate to the period prior to the amendment made in the

Civil Procedure Code in Order 6 Rule 17. Order 6 Rule 17 CPC as it stood at the relevant time postulate amendment at any stage of the proceedings but after the amendment, the requirement is that the amendment can be allowed before the trial commences. The trial had commenced some time in 2009. The petitioner had filed an application for framing additional issue though they did not amend the plaint.

They cannot be heard saying after five years that they had exercised due diligence or could not have raised the matter before the commencement of trial. Any amendment made at a later stage does prejudice the other party and defeats the law of limitation which cannot be permitted.

In *Union of India vs. Pramod Gupta (dead) by LRs and Others, (2005) 12 SCC 1*, the Apex Court cautioned that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings.

By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The Court's jurisdiction
to allow such an application is taken away unless the conditions
precedent therefore are satisfied, viz., it must come to a conclusion that in
spite of due diligence the parties could not have raised the matter before
the commencement of the trial.

There is no merit in the petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

December 16, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No