

Civil Revision No.613 of 2017 (O&M)

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

Sr. No.117

**Civil Revision No.613 of 2017 (O&M)
DECIDED ON: March 01, 2017**

RAMESH AND ANOTHER

..PETITIONERS

VERSUS

SURAJ BHAN AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioners.

JASPAL SINGH, J.

CM No.1884-CII of 2017

Application is allowed as prayed for.

CR No.613 of 2017

Through the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated January 12, 2017 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Karnal whereby an application under Order VI Rule

17 CPC read with Section 151 CPC filed by the petitioners/defendants for amendment of the written statement has been dismissed.

2. Through the proposed amendment in Para No.3 of the preliminary objection of written statement, the petitioners intend to incorporate as under:-

“That the plaintiff has suppressed the true and real facts from this Hon'ble Court, the true and real facts are that the Amar Singh had three sons namely Suraj Bhan (plaintiff), Mam Raj (missing) and Mam Chand (died in 1984) the predecessor of defendants no. 1 & 2 and all were coparceners. During the lifetime of Amar Singh, the plaintiff asked his separate share in the coparcenary property and Amar Singh partitioned the property and share of Suraj Bhan (plaintiff) separated from coparcenary property. Amar Singh died. The Mam Raj and Mam Chand constituted coparcenary family and were cultivating their share of agriculture land jointly coparcenary property. Before leaving the house by Mam Raj, the Mam Raj given his share to the Mam Chand by way of family settlement and since then, the share of Mam Raj was being cultivated by Mam Chand being sloe heir/coparcener of Mam Raj in coparcenary family constituted by Mam Chand and Mam Raj and Mam Chand inherited the property of Mam Raj. The defendant no. 1 & 2 are entitled to the whole share of Mam Raj being legal heirs of Mam Chand.

The above named Mam Raj had left the house 43 years ago. It is pertinent to mention here that the Mam Raj was married before he left his house. The Mam Raj had left the house on dated 15.09.1971 after the three month of marriage of Mam Chand. The date of marriage

of Mam Chand was 15.06.1971 and he had never been heard for seven years by those who would naturally have heard of him if he had been alive. Thus, he was civil dead on dated 16.06.1978.

After leaving the house by the said Mam Raj, he was searched everywhere by plaintiff, Mam Chand (predecessor of defendant no. 1 & 2) and all relatives but could not be found. After about one and a half years of missing of Mam Raj, the parents of his wife convened a panchayat at Village Pundrak consisting of plaintiff, Mam Chand (predecessor of defendant no. 1 & 2) and Pehal Singh s/o Mamu Ram, Nathu ram, Bakthar and other respectable of village Pundrak and village Mussepur, Tehsil Indri District Karnal. The said panchayat after considering the Mam Raj as dead decided that the wife of Mam Raj shall go back to her parental house at village Mussepur, Tehsil Indri District Karnal. It was further decided in the Panchayat that the share of Mam Raj shall be cultivated by both his brothers i.e. plaintiff and Mam Chand (predecessor of defendant no. 1 & 2) and after his death the defendants no. 1 & 2 have inherited the land of their father Mam Chand which also comprised the land which said Mam Chand inherited from Mam Raj.

The above named Mam Raj since the day of his missing has not been heard of alive by these persons, including the plaintiff, who would have naturally heard of him, if he had been alive.

Now, the plaintiff only with a view to grab the share of defendant no. 1 & 2 which they inherited from the estate of Mam Raj had managed to procure a death certificate regarding the death of Mam Raj which was allegedly issued by Gram Panchayat of village Bira

Kheri Tehsil Nukud abd District Saharanpur (U.P.) wherein the Mam Raj was shown to be expired on dated 15.03.2008. The said death certificate is a forged and bogus document, which has been illegally fabricated and procured by plaintiff in collusion with said Sarpanch. Otherwise also had the said Mam Raj expired on dated 15.03.2008, as alleged then, he would have been heard by the plaintiff, defendants and other persons who would have naturally heard of him. As a matter of facts the said death certificate has been fabricated and illegally procured by the plaintiff only with a view to exclude the defendant no. 1 & 2 from the estate of Mam Raj, and the answering defendants reserved their right to initiate criminal proceedings against plaintiff and all those involved for making false and fabricated death certificate dated 15.03.2008 and producing and using the same in court of law.

The plaintiff in collusion with revenue authorities also tried to get mutation of inheritance of Mam Raj bearing no. 1414 qua his estate sanctioned in his favour by showing the Mamraj to have died on dated 15.03.2008, the said mutation proceeding has been dismissed by declaring death certificate dated 15.03.2008 forged and null and void by the Court of Learned District Revenue Officer exercising the power of A.C 1st Grade, Karnal being objected by defendants no. 1 & 2 vide order dated 29.01.2014 and appeal against said order has also been dismissed by the Collector, Karnal.

3. The contention of the learned counsel for the petitioners is that it is an admitted fact that Mam Raj had left the house since 43 years ago and no one that the parties to the suit and their relatives have ever heard about

his whereabouts since then. The petitioners intend to incorporate the paragraph and consequent amendment in the other paragraphs in this regard. The amendment sought by the petitioners is nothing but clarificatory nature which would be helpful to the court for effective and judicious adjudication of the matter in controversy. Moreover, it is well settled proposition of law that the amendment of the plaint can be allowed at any stage even at the appellate stage. Otherwise also the respondent/plaintiff is not going to prejudice, in case, the proposed amendment is allowed.

4. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners but finds the same to be without any legal weight.

5. Before proceeding to decide the instant petition on merits, it would be desirable to reproduce Order VI Rule 17 of the Code of Civil Procedure, which reads as under:-

“17. Amendment of pleadings:- The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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.”

6. A glance at the aforesaid provision transpires that either of the

parties through the suit may be allowed to alter or amend his pleading at any stage of the proceedings on such terms as may be just, and all such amendments which are necessary for the purpose of determining the real questions in controversy between the parties. Further the proviso attached to it specifically provides 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 matter before the commencement of the trial.

7. Adverting to the facts of the case in hand, the respondent-plaintiff has already closed his evidence. Thereafter, the petitioners-defendants have already been afforded three opportunities to adduce and conclude their evidence and after availing three opportunities, an application for amendment of the written statement was filed meaning thereby that application has been moved by the petitioners/defendants after the commencement of the trial. However, there is nothing on record to suggest that proposed amendment was not in the knowledge of the petitioners/defendants in spite of due diligence. Moreover, there is no explanation furnished by the petitioners/defendants as to what necessitated the seeking of amendment of the written statement. The proposed amendment is not a clarificatory in nature as has been argued by the learned counsel for the petitioners. Rather, it would change the entire nature and character of the defence and would also result into causing prejudice to the respondent-plaintiff. Moreover, petitioners/defendants are not going to suffer any loss or prejudice, in case, the amendment is declined, which has otherwise been sought at a belated stage. The petitioners/defendants have

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failed in the test laid by the proviso II Order VII Rule 16. Thus, this court is of the considered view that impugned order dated January 12, 2017 being absolutely in consonance with the settled canons of law and does not call for any interference by this court. Rather, the proposed amendment is nothing but a novel device adopted by the petitioners/defendants to delay and prolong the disposal of the suit, which has already reached at its penultimate stage.

In the light of what has been discussed above, instant revision petition stands dismissed, whereby impugned order dated January 12, 2017 is upheld.

No order as to costs.

March 01, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No