

In the High Court of Punjab and Haryana at Chandigarh

CR No.7130 of 2017(O&M)

Date of Decision: 14.11.2017

Babbu @ Babli Devi

---Petitioner

versus

Dalip Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Akhil Bhasin, Advocate
for the petitioner**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 19.8.2017 (Annexure P-8) passed by the Civil Judge (Junior Division), Kurukshetra whereby an application filed by respondent No. 1/plaintiff for amendment of the plaint in order to challenge transfer deed dated 22.1.2016, set up by the petitioner, has been allowed.

Counsel for the petitioner has challenged the impugned order primarily on three counts. The first submission made by counsel is that the petitioner filed written statement as well as counter claim to which the respondent/plaintiff filed replication (Annexure P-4) raising averments that the alleged transfer deed No. 8837 dated 22.1.2016 is a fraudulent document and subsequent entry in the municipality record on the basis of transfer deed is illegal and liable to be set aside. On the basis of pleadings of the parties, issues were framed on 4.5.2017 and the case was adjourned to 25.5.2017 for evidence of the respondent/plaintiff. At that stage, the instant application

was filed which is hit by the proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure (in short “the Code”). Another submission made by counsel is that as the respondent/plaintiff can challenge the aforesaid transfer deed by filing a separate suit, he should not have been permitted to add the relief qua challenge to the transfer deed by way of amendment. The third submission made by counsel is that claim of the respondent/plaintiff to challenge the transfer deed is barred by limitation, therefore, a serious prejudice shall be caused to the petitioner in case the respondent/plaintiff is allowed to introduce a time barred claim by way of amendment.

I have heard counsel for the petitioner and perused the paper book particularly various annexures appended with the petition but find that the petition sans merit and liable to be rejected.

In *Revajeetu Builders and Developers vs. Narayanaswamy and sons and others*, 2010(1) RCR (Civil) 27, Hon'ble the Supreme Court of India while taking into consideration proviso appended to Rule 17 Order 6 CPC culled out certain factors to be taken into consideration while dealing with the application for amendment of pleadings. The 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.”

In the case at hand, the respondent/plaintiff filed a suit for permanent injunction in respect of house, detailed in head note of the plaint. Defendants No. 1 and 2 therein filed the written statement and counter claim Annexures P-2 and P-3 respectively and they had set up a transfer deed dated 22.1.2016 purported to be executed by Vidya Devi defendant No. 1 in favour of Babbu @ Babli defendant No. 2. Subsequent thereto, the respondent/plaintiff filed replication as well as reply to the counter claim, challenging the said transfer deed to be the result of fraud and liable to be set aside.

The application for amendment of the plaint was filed before any evidence is adduced by the respondent/plaintiff though issues in the case have been framed. As per the settled position in law, proviso appended

to Rule 17 of Order 6 of the Code does not completely debar from allowing amendment of the pleadings after commencement of trial. The mere fact that the respondent/plaintiff did not file an application for amendment of the plaint immediately after filing of the written statement and counter claim by the defendants is not sufficient to accept contention of the petitioner that the trial court has committed a patent error by allowing plea of the respondent/plaintiff. The mere fact that the respondent/plaintiff can file an independent suit to challenge the transfer deed is not sufficient to deny claim for amendment of pleadings when on the contrary, allowing the amendment would avoid multiplicity of litigation between the parties. The plea that relief claimed by amendment of the plaint would introduce a time barred claim is clearly misconceived and liable to be rejected. Counsel for the petitioner has failed to make out a case if application for amendment is mala fide or the same would result in such a prejudice to the petitioner for which costs is not the remedy.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

14.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No