

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

CR No.8141 of 2014

Date of Decision: 28.11.2017

Kewal Krishan

.....Petitioner

Versus

Dharambir and others

... Respondents

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

Present:Mr. Munish Mittal, Advocate and
Mr. Vishal Sharma, Advocate
for the petitioner.

Mr. Deepak Basatia, Avocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. The petitioner has assailed the order dated 18.9.2014 passed by Civil Judge (Jr.Divn) Yamuna Nagar vide which application under Order 6 Rule 17 CPC for amendment of the plaint was rejected. An agreement to sell dated 31.3.2004 was executed between the parties. There was a contingent recital in the agreement to sell which was dependent upon happening of any event i.e. decision of Regular Second Appeal pending in the High Court. Suit for permanent injunction was filed by the plaintiff-petitioner on 1.8.2011. Para No.7 of the plaint reads as under:

“That in between the defendant No.2 and 3 attained majority and the prices of the land increases many a fold and the intentions of the defendants became

dishonest and they started interfering in the actual physical peaceful cultivating possession of the plaintiff over the suit land and when the plaintiff resisted them and requested them not to do so, then they in order to cause wrongful loss to the plaintiff have given a false application before the P.S.Radaur. The plaintiff also moved an application before the police, which applications are still pending. The defendants in order to harass the plaintiff entered into a vague agreement of lease qua the suit land with one Jaswant Singh vide agreement of lease dated 18.6.2011 for which they have got no right to do so because they were not in possession of the suit land and they cannot hand over the possession to Jaswant Singh or any other person because possession of the suit land is with the plaintiff since 31.3.2004 i.e. date of agreement to sell and the defendants through Jaswant Singh got filed a false suit for permanent injunction which is pending adjudication before the court of Sh.R.S.Dhanda, Addl.Civil Judge, Senior Division, Jagadhari in which the defendants have given admitted written statement in which they have stated that the agreement to sell dated 31.3.2004 had taken place between the plaintiff and defendant No.1, but the same was got cancelled on 25.1.2005, whereas the said agreement has never been cancelled and no amount has been returned by the defendants to the plaintiff.”

[2]. Regular Second Appeal was ultimately got dismissed as withdrawn. At the time of the withdrawal of the Regular Second appeal, the suit for permanent injunction was in existence. The factum of the cancellation of the agreement to

sell was even pleaded in the aforesaid para but on explanatory note. On 18.6.2011, one more agreement to sell came to be in existence with Jaswant Singh and on the basis of that agreement to sell, Jaswant Singh had filed a suit for permanent injunction against the petitioner and respondents No.1 to 3. Respondent No.1 filed the written statement on 14.7.2011 in the said suit for permanent injunction, specifically pleading the factum of cancellation of agreement to sell dated 25.1.2005. The filing of suit for permanent injunction of the petitioner on 1.8.2011 and thereafter, filing of the present application under Order 6 Rule 17 CPC on 20.2.2014 have to be appreciated on legal parameters as to whether cause of action for conversion from suit for permanent injunction to that of specific performance was within limitation on the date of application i.e. on 20.2.2014 or not?

[3]. Apparently in para No.7 of the plaint, reference to the cancellation of agreement to sell was made by the plaintiff. It was only a suggestion given during the course of cross examination of the plaintiff in the context of said cancellation of agreement to sell and that will not advance any cause of action for filing the application on 20.2.2014. Limitation has to be started either from the date of agreement to sell on 31.3.2004 or from the cancellation dated 25.1.2005. Necessary information

was provided by the defendants in the written statement dated 14.07.2011 filed in a suit for permanent injunction filed by Jaswant Singh.

[4]. Evidently, recital of agreement to sell was not only contingent upon pending litigation, but suit for permanent injunction was in existence when regular second appeal was got dismissed as withdrawn on 12.12.2012. The factum of cancellation of agreement to sell was duly pleaded in the written statement dated 14.07.2011 filed in the suit filed by Jaswant Singh.

[5]. Though amendment in the pleadings has to be liberally construed, unless and until it takes away valuable right of the opposite party. All *bona fide* amendments in the pleadings ought to be allowed. The *bona fide* of the parties has to be tested in order to prevent frivolous application for amendment. The object of the Rule is to try merits of the case and allow all *bona fide* amendments which are required for real determination of the controversy between the parties.

[6]. 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 obligates the Court to allow all those amendments which are necessary for real determination of the issue between the parties. The first

condition is that the amendment should not be unjust and should not cause prejudice to the opposite party. The opposite party cannot be compensated in terms of cost in the event of acceptance of such prayer for amendment. Second condition is that the amendment is considered to be necessary by the Court for the purposes of deciding real issue. The conscience of the Court should be satisfied in respect of genuineness of the prayer. The prayer for amendment if appears to be barred by time or would cause irreparable loss to the opposite party should not be allowed.

[7]. In view of **Revajeetu Builders and Developers Vs. Narayanaswami and Sons and others, 2010(1) RCR (Civil) 27**, the exercise in terms of Order 6 Rule 17 CPC should be done with great caution and this power has to be exercised very sparingly in the interest of justice. The stage of litigation is also a relevant factor for acceptance or rejection of the prayer for amendment in the 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 for amendment. The provisions are only illustrative and exercise should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment, but at the same time, should not allow *mala fide* or dishonest amendment.

[8]. The power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice in order to minimize the litigation. The relief which has become time barred cannot be inserted by way of an 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 proviso was added by way of Amendment Act 22 of 2002 to prevent application for amendment after the trial has commenced, unless the Court is satisfied that in spite 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. The ratio laid down in **Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481** and **J. Samuel and others Vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903** can be relied in order to visualize the situation whether prayer for amendment is based on a fallacy or would project a real cause of action.

[9]. If the statement made in the application for amendment is not proved to be correct, such disputed pleadings cannot be allowed to be inserted by way of amendment. The reference can be made to the ratio laid down in **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, wherein it was held that if *prima facie*, the statement made in the application for amendment is proved to be incorrect, the amendment should not be allowed.

[10]. Learned counsel for the petitioner relied upon **Kuljit Singh Vs. Sukhdev Singh and others, 2009(3) RCR (Civil) 751, Harphool Singh Vs. Subhash Chander, 2013(6) RCR (Civil) 693 and Pritpal Singh and others Vs. Harmesh Kumar, 2014(2) PLR 613**. The aforesaid decisions are based on the normal pleadings without a reference of the cause of action having become barred at the time of filing of the application for amendment. The litigation to rake up a cause of action has to be taken either from the date of execution of

agreement to sell or with effect from the date on which the agreement to sell was cancelled on 25.01.2005. A due communication was made to the petitioner when a written statement was filed in a suit filed by Jaswant Singh and that was the information given in respect of cancellation of agreement to sell in 2005.

[11]. In view of references made in the aforesaid precedents, I deem it appropriate not to grant any indulgence in favour of the petitioner as the proposed amendment is in respect of a issue/cause which has become time barred on the date of filing of the application. This revision petition is accordingly dismissed.

28.11.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No