

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2549 of 2017(O&M)
Date of Decision: 05.10.2018

Narinder SinghPetitioner
Versus
Sukhwinder Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Nakul Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 22.02.2017 passed by Additional Civil Judge (Senior Division), SBS Nagar, whereby application filed by the respondents under Order 6 Rule 17 CPC for amendment of the written statement was allowed.

[2]. Plaintiff filed a suit for permanent injunction in respect of 1 kanal of land as shown in the site plan. Para Nos.2 and 3 of the plaint read as under:-

“2. That the plaintiff is the real brother of defendant No.1 and son of defendant No.2. The suit land including some other land was earlier ownership of

Mohinder Singh, father of plaintiff and defendant No.1. The plaintiff inherited the suit land and other estate of his father Mohinder Singh on the basis of natural succession and Sh. Mohinder Singh died intestate. The mutation of the same has been sanctioned in favour of LR's of Mohinder Singh on the basis of natural course of succession. So after the demise of Mohinder Singh, the plaintiff came in possession of the suit land to the extent of his share as owner. The written compromise has been effected between the parties to the suit and the copies of the said sale deed are attached herewith. 3 That the suit land is part of the land inherited by the plaintiff and is very valuable part of land which is red line/Gair Mumkin Abadi situated within the precincts of village Jandiala. The site plan and photographs are also annexed herewith."

[3]. In the original written statement filed by the defendants, following pleas were incorporated in para Nos.2 and 3:-

"2. That para No.2 of the plaint is correct only to the extent that the defendant No.1 is the real brother of the plaintiff but it is absolutely false and frivolous that he is son of defendant No.2. The age of the plaintiff has been described as 35 years in the head note of the plaint while the age of the defendant No.2 is 34 years. It is absolutely wrong and incorrect that Sh. Mohinder Singh father of the plaintiff and defendant No.1 died intestate but the fact is that the plaintiff and defendant No.1 have been rendering services to the deceased Sh. Mohinder Singh and in lieu of services he executed a legal, valid and registered Will dated 07.09.1994

while in a sound disposing mind in favour of the plaintiff and defendant No.1. Sh. Mohinder Singh died on 10/10/2007 and on the basis of the said Will the plaintiff and defendant No.1 became owners of the property in dispute to the extent of ½ share each. Since 1992 the plaintiff is away to a foreign country so the defendant No.1 along with his family comprising of the defendants is residing in entire house in dispute and has also obtained telephone connection in his name. The defendant No.1 is also paying the electricity bills. The defendant No.1 even paid the loan incurred by his father from Banga Primary Co-operative Agriculture Development Bank Banga and even cleared other liabilities of his father also. No written compromise was effected between the parties. In fact the said deed is void, nonest, inoperative and is not binding upon the defendant No.1 on the following grounds:-

a) That the defendant No.1 is not a party or signatory to the agreement dated 12/03/2014, as such, any terms and conditions recorded in the said document are not legally binding upon the defendant No.1.

b) That the said document is also void as the same deals with immoveable property worth more than Rs.100/- and is unstamped and unregistered.

3. That para No.3 of the plaint is absolutely wrong and incorrect. The plaintiff has wrongly described the property in dispute as a land whereas in fact it is a built up house which is in possession of the defendants.”

[4]. By way of application for amendment of the written statement, defendants sought to incorporate that Mohinder Singh father of the plaintiff and defendant No.1 had purchased 11 marlas of land from Dalmir Singh son of Gurdayal Singh vide sale deed dated 23.05.1966. The sale deed was registered with the Sub Registrar. Thereafter, Mohinder Singh constructed the house in which plaintiff and defendant No.1 have half share each. Defendants/respondents also sought to incorporate plea of non-joinder of necessary parties, locus standi to file the suit qua khasra Nos.208 and 211 and also with regard to non-disclosure of Will of late Mohinder Singh viz-a-viz non-disclosure of fact that major portion of the house is constructed in khasra Nos.208 and 211.

[5]. Admittedly, the plaintiff evidence has not started as yet. The law of amendment of written statement is to be liberally construed. Defendant is entitled to take even inconsistent plea by way of proposed amendment. Amendment of written statement stands on different pedestal than that of plaint.

[6]. Since in the plaint, the plaintiff has not pleaded anything with regard to execution of sale deed dated 23.05.1966 qua 11 marlas of land, therefore, entitlement of Mohinder Singh would be tested with reference to plea taken by the defendant whether he is acquiring the title on the basis of

sale deed as pleaded in the proposed amendment or otherwise.

[7]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice between the parties. All *bona fide* amendments which are necessary for determining the real issue between the parties should be allowed. First part of the Rule is discretionary, however second part is imperative and enjoins the Court to allow all necessary amendments.

[8]. In ***Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830***, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Para Nos.20 and 23 of the aforesaid judgment are being reproduced hereasunder:-

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”

[9]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real controversy between the parties. At this stage, this Court is not obliged to go into the correctness or falsity of proposed amendment. The merits of the case are not to be appreciated by way of proposed amendment. No admission is going to be withdrawn, rather elaboration of pleadings already made in the original written statement is permissible. The proposed plea inasmuch that by way of necessary title of late Mohinder Singh to the tune of 11 marlas on the basis of sale deed, no prejudice is going to be caused to the plaintiff as the plaintiff would be entitled to lead evidence that late Mohinder Singh was owner of 1 kanal of land. All the exercise would be dependent upon

quality of evidence to be led by the parties at the relevant stage.

[10]. Since the plaintiff evidence has not yet started, therefore, at this stage, I do not see any error of jurisdiction in the order passed by the trial Court. However, while dismissing this revision petition, I propose to grant costs of Rs.10,000/- to the plaintiff as nothing was awarded by the trial Court. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

[11]. Disposed of.

October 05, 2018

Prince

**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**