

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4120 of 2013 (O&M)

Date of Decision: 25.09.2018

Kulwant Singh and another

...Petitioners

Vs.

Balbir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Harpreet Kaur Dhillon, Advocate,
for the petitioners.

Mr. Vaibhav Sehgal, Advocate,
for the respondent.

Amol Rattan Singh, J.

By this revision petition, the petitioners, who were defendants in the suit filed by the respondent-plaintiff (their sister), challenge the order of the learned appellate Court dated 01.06.2013, by which the petitioners' application under Order 6 Rule 17 of the Code of Civil Procedure, seeking permission to amend their written statement, was dismissed.

2. In her suit, the respondent-plaintiff has sought a decree of declaration to the effect that she is owner in joint possession of the suit property to the extent of a 1/3rd share therein, the said property having previously been in the ownership of their father, Puran Singh, and therefore it devolved equally upon his three children, after his death.

She also challenged the validity of the will executed by their late father, dated 29.03.1981, as also the will stated to be executed by the mother of the parties on 10.05.1988.

3. The present appellants in the written statement filed by them admitted their father to have been the owner of the suit property but claimed

that it had been bequeathed to them by their parents vide the aforesaid two wills. Hence, they claimed to be owners in possession of the suit property, to the exclusion of the respondent.

4. The suit was partly decreed by the trial Court, to the extent that the will executed by Puran Singh was disbelieved, whereas the will executed by Dalip Kaur was held to be a valid will, with the respondent-plaintiff therefore declared to be the owner in joint possession, to the extent of not a 1/3rd but a 1/4th share in the suit property, as had been described in the head note of the plaint.

5. The petitioners challenged the said judgment and decree before the learned first appellate Court (Additional District Judge, Ludhiana), and during the pendency of the appeal, the application under Order 6 Rule 17 CPC was filed, seeking that they be allowed to take a new plea by way of an amendment to their written statement, such plea being that while they were minors, their father Puran Singh having sold the property on 22.07.1960 to one Balwant Singh, the said sale was challenged by them (present petitioners-defendants) through their next friend and guardian, by instituting a suit of preemption, which was decreed in their favour by the Court of the learned Sub Judge Ist Class, Jagraon, on 01.05.1963.

Mutation no.3666 was subsequently entered in the revenue record on the basis of that decree. However, the petitioners further contended that they were earlier unaware of such mutation being sanctioned and therefore could not raise the said plea in their original written statement and as a matter of fact, they had come to know of the previous decree dated 01.05.1963 only in the month of March 2007 and consequently sought to amend the written statement to bring on record the aforesaid facts.

(It is to be noticed at this stage that the suit was instituted on 18.01.2001, with the appeal filed against the judgment and decree in that suit (dated 07.03.2007) instituted on 20.04.2007).

6. The respondent-plaintiff having filed a reply to the aforesaid application under Order 6 Rule 17, took a stand (as per the impugned order) that it had been only filed to delay the decision in the appeal and that the application itself was delayed, with the appellants also estopped by their own act and conduct from filing it. The facts as contended by the petitioners were denied by her, other than the decision of the suit in her favour (the judgment which was under appeal).

7. The learned appellate Court while observing that though as a general rule amendment of pleadings should be liberally allow with technicalities of law not hampering the administration of justice, however, after a party to a *lis* made an admission of a fact, that party could not be permitted to withdraw the admission and take a completely inconsistent and in fact a mutually destructive plea by way of amended pleadings.

8. Having observed as above, that Court went further on to observe that while contesting the suit the petitioners herein (defendants in the suit) had admitted that their father, Puran Singh, was the absolute owner of the suit property and as such they had propounded the will executed by him as also by their mother Dalip Kaur, to lay a claim to the entire property. However, vide the amendment sought, they sought to take a wholly inconsistent plea that they had in fact become owners of the suit property by virtue of the decree in their favour in the year 1963, in the suit earlier filed by them seeking the right of preemption to purchase the suit property from their father.

9. Thereafter, while citing judgments of the Supreme Court in M/s

Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s Ladha Ram & Co. AIR 1977 SC 680, as also Vidyabai & Ors. v. Padmalatha & Anr. 2009 (1) RCR (Civil) 763, with appellate Court went on to hold that on the basis of the ratio of the former judgment, an entirely new case could not be set up by way of an amendment and as per the ratio of the latter case, amendment in pleadings could only be allowed before the commencement of the trial and not thereafter.

On the aforesaid reasoning, the application of the petitioners was dismissed.

10. While issuing notice in this petition in the year 2013, the appellate Court was directed to adjourn the proceedings beyond the date fixed by this Court, which order continues to subsist.

On May 30, 2016, learned counsel for the petitioners had sought time to place on record a copy of the preemption decree passed in favour of the petitioners but eventually even till August 08, 2018, the said decree had not been placed on record, with learned counsel having submitted to this Court that old record at Jagraon (where the decree had been passed), had been transferred to Ludhiana and consequently, a copy of the decree could not be obtained.

As a matter of fact at that stage itself, learned counsel for the respondent had drawn attention of this Court to Annexure P-3 (subsequently placed on record with the petition by the petitioner), which is seen to be a report of an official of the District Court (stated to be by learned counsel at Ludhiana), stating to the following effect:-

“Entry Register seen. No such case is enter. The requisite record may be presumed as spoiled.”

Even so, an opportunity had still been given to the learned counsel for the petitioners to obtain a copy of the decree and produce it before this Court.

11. However, she still not having been able to do so, she had submitted on the next date of hearing before this Court, that though the decree of 1960 has not been obtained by the petitioners, it already having been obviously destroyed as per what is recorded in the document annexed as Annexure P-3 with the petition, this Court would not go into the merits of the evidence sought to be led, but only on the issue of whether an amendment should have been allowed at the stage of the Ist appeal, which has been rejected vide the impugned order.

Learned counsel for the petitioners relied upon a judgment of a co-ordinate Bench of this Court in Gautam Sarup v. Anand Sarup and others 2006 (4) RCR (Civil) 248, in support of the aforesaid argument.

As regards allowing of an amendment in the written statement even at the appellate stage, she relied upon a judgment of a co-ordinate Bench of the Allahabad High Court, in Gauri Bala Dutta v. IIIrd Addl. Civil Judge, Varanasi and another AIR 1991 Allahabad 216.

12. Mr. Vaibhav Sehgal, learned counsel for the respondent, on the other hand submitted that this Bench and two Benches earlier already having virtually restricted the arguments of the petitioners to the question of producing the decree that is now sought to be relied upon by the petitioner-defendants by amendment of the written statement, no other arguments are available to her.

He submitted that though the said orders of this Court are interim orders, however, since a last opportunity had been granted, therefore

all other arguments of the petitioners are to be ousted. He specifically referred to the orders dated May 22, 2018, in that context.

13. On the merits of the matter, he relied upon various judgments of the Supreme Court in M/s Modi Spinning and Weaving Mills Co. Ltd. and another v. M/s Ladha Ram and Co. AIR 1977 SC 680, S.Mala Reddy vs. M/s Future Builders Co-operative Housing Society and others 2013(2) RCR (Civil) 957, Heeralal vs. Kalyan Mal and others (1998) 1 SCC 278 and Vidyabai and ors. vs. Padmalatha and anr. 2009(1) RCR (Civil) 763, as also to those of this Court in Ram Niranjana Kajaria and anr. v. Sheo Prakash Kajaria and ors. 2015(5) Law Herald (P&H) 3782, Gautam Sarup v. Leela Jetly 2008(3) Law Herald (P&H) 2141, Mukesh Kumar vs. Sushil Mittal and ors. 2013 (1) Civil Court Cases 211 (P&H), Ishwar Singh and others vs. Sher Singh and others 1988 Civil Court Cases 493 (P&H), New Bank of India vs. Suba Singh and another 2006 (1) RCR (Civil) 165, Bhuria Ram vs. Jagan Nath 2006(4) RCR (Civil) 421, Rajbir Singh and ors. vs. Tejinder Singh and ors. 2015(1) Law Herald (P&H) 725, Harbilas (deceased) through Lrs vs. Balbir Singh 2017(1) RCR (Civil) 662, Gian Chand Goel vs. Ankush Goel 2016 (3) Law Herald (P&H) 2032.

Thus, it was his contention that other than the fact that even the decree that was sought to be relied upon was not available with the petitioners, the amendment, even in terms of the proviso to Order 6 Rule 17, could not be allowed.

14. Having considered the matter, though I agree with learned counsel for the petitioners and disagree on that issue with learned counsel for the respondent, that when an amendment sought goes to the root of the matter, then even in terms of the proviso to Order 6 Rule 17, an amendment in

pleadings would be allowed by the Court in the interest of justice, if it is shown that the amendment was one with regard to facts which the party seeking the amendment could not have had knowledge despite due diligence; however, in the present case, in my opinion, the very decree on the basis of which the amendment is sought, not having been obtained by the petitioners despite best efforts, allowing the amendment would only mean delaying proceedings in the suit (other than the fact that they have already been delayed for 5 years now during the pendency of this petition before this Court), with there being no fruitful outcome of any such amendment, because once the petitioners are unable to prove the decree in any manner, naturally their reliance on such a non-proved decree, to accept their contention that they had become owners of the suit land way back in 1963, would not be possible.

15. Hence, even reliance by learned counsel for the appellants on various judgments (other than those referred to hereinabove), on the issue of even allowing the amendment at the stage of an appeal, would not come to the petitioners' rescue, once it has been seen by this Court that the basis of the amendment itself is something which is not provable by the petitioners and consequently, allowing such amendment would only mean virtually a fresh start of the litigation.

Undoubtedly, learned counsel for the petitioners is also correct in her contention that this Court in a revision petition against the impugned order, would not go into the merits of the evidence sought to be led and only on whether the amendment could be allowed at the stage of the first appeal; however, with the very evidence on the basis of which the amendment is sought, actually not being provable, as has already been admitted before this Court, to the effect that the decree is not available, then what learned counsel

has contended though may hold good on principle in an appropriate case in its own circumstances, cannot hold good in the aforesaid circumstances of the present case.

Even if this Court were to accept that the petitioners, despite due diligence, did not have knowledge of the decree in their favour when they were very minor children, and on that ground an amendment in their written statement may be permissible even at the appellate stage in terms of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, however, as already said, in the circumstances that the decree itself is not possible to be proved, it not being available at all (presuming that it had been passed in 1963 as contended), the amendment would only reopen the entire *lis* from the initial stage.

16. Consequently, there being no foundation to amend the written statement, it would actually be a wholly futile exercise to allow it, thereby putting the respondent through yet a longer period of litigation.

It is also to be noticed by this Court that if for five years during the pendency of this petition, the decree on the basis of which the amendment is sought, has not been found by the petitioners, obviously even if the amendment were to be allowed, even till the stage that evidence would be led by them it would not be found.

Hence, finding no merit in this petition, it is dismissed.

No order as to costs.

September 25, 2018

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(AMOL RATTAN SINGH)

JUDGE

1. Whether speaking/reasoned?

Yes

2. Whether reportable?

Yes