

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**CR No.3882 of 2017**  
**Date of Decision-08.08.2018**

Gurjit Kaur and another ... Petitioners  
Versus  
Balwinder Singh and others ... Respondents

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

Present: Mr. Manish Kumar Singla, Advocate  
for the petitioners.

Mr. Deepak Kaushal, Advocate  
for respondents No.2 to 5.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioners have challenged the order dated 20.04.2017 passed by Civil Judge (Junior Division), Sunam vide which the application under Order 6 Rule 17 CPC for amendment of plaint was rejected.

[2]. Plaintiffs filed a suit for declaration to the effect that the plaintiffs are owner in possession of half share in land bearing killa No.167//17(7-8) situated at village Janal and defendants Nos.2 to 5 have no concern with the aforesaid land and mutation Nos.7670 and 7671 were claimed to be illegal, null and void. Permanent injunction was also sought, restraining the defendants from alienating the suit property.

[3]. Following recital was made in para Nos.1 and 6 of the plaint:-

*“1. That earlier Sumar Singh @ Shamsheer Singh @ Aala Singh s/o Mangal Singh was owner in possession of land measuring 7 kanal 8 marla situated at village Janal as mentioned in heading part A of the suit.*

*6. That apart from suit land, 195 kanal 7 marla land situated at village Janal was also there in the name of Sumer Singh and mutation of inheritance of the same had been sanctioned in favour of Balwinder Singh and Joginder Singh, on the basis of registered Will. Copy of mutation No.5680 village Janal, land measuring 195 kanal 7 marla is attached with the suit.”*

[4]. Now in the application for amendment of plaint, the plaintiff sought to amend the pleadings on the ground that the deceased Shamsheer Singh was having land at two places in village Janal and Shamsheer Singh had executed a Will in favour of his both sons. Mutation of some property was sanctioned as per said Will, but mutation of some property was sanctioned on the basis of natural succession. The suit was filed in that context, but the plaintiff inadvertently could not mention the number of other property in respect of which mutation was sanctioned on the basis of natural succession. The proposed amendment was to the said effect i.e they want to mention numbers of property of the mutation which was sanctioned on the basis of natural succession.

[5]. Defendant No.1 was proceeded against *ex parte* before the trial Court. Defendants No.2 to 5 denied the execution of Will in favour of the plaintiffs. Defendants No.2 to 5 stated that

earlier the defendants have filed a suit i.e. Suit No.197 of 25.07.2011 titled Bajlit Kaur Vs. Gurmeet Kaur in respect of 95 kanal 75 marla of land, in which compromise was effected and the suit was dismissed. Therefore, mutation sanctioned on the basis of Will was illegal and mutation sanctioned on the basis of natural succession was correct.

[6]. Trial Court dismissed the application on the ground that the proposed amendment was very much in the knowledge of the plaintiffs at the time of filing of the suit and they did not describe the numbers of the suit property. By addition of number, a new cause of action will arise and the nature of the suit land will be changed. The suit was filed in the year 2013 and after five years, the nature of the suit will be changed.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. During arguments, it has transpired that the plaintiffs have already concluded their evidence. At one point of time, defence of the defendants was struck off and the application was filed for setting aside the said order.

[9]. Learned counsel for the petitioners submitted that the respondents took more than two years to file reply to the application under Order 6 Rule 17 CPC. The case was adjourned for 17 occasions for filing reply. Learned counsel contended that no new case would be made out by incorporation of proposed

amendment as the land under the mutation sanctioned on the basis of natural succession would be given due numbers. The amendment is only clarificatory in nature for which no further evidence is required to be led by the parties except nomenclature of the land viz-a-viz the number. Such an incorporation would not make the cause of action to be time barred by any stretch of imagination. Defendants themselves took number of opportunities to file reply to the application under Order 6 Rule 17 CPC and the case is still at the stage of leading defence evidence which was at one point of time was struck off and application was filed thereafter for setting aside of that order.

[10]. On the other hand, learned counsel for the respondents by referring to para No.6 of the plaint submitted that the pleadings made therein would show that the plaintiffs were in the knowledge of the fact that mutations of inheritance as well as on the basis of Will were sanctioned, still the application in question was filed at such a belated stage. Learned counsel further submitted that the proposed amendment cannot be allowed after the commencement of the trial as the application lacks both the ingredients of knowledge and due diligence. Learned counsel referred to **Parbhati Lal Vs. Dalip Singh and another, 2012(4) RCR (Civil) 1007, L.C. Hanumanthappa (since deceased) represented by his LRs Vs. H.B. Shivakumar, 2015(4) RCR (Civil) 194, Amar Singh s/o Boor Singh now deceased through his LRs Vs. Pritam Singh and**

**others, 2017(1) RCR (Civil) 320** and **Navneet Singla Vs. Haryana Urban Development Authority and others, 2016(3) RCR (Civil) 1049** and contended that the proposed amendment was already in the knowledge of the plaintiffs and the said fact was pleaded in para No.6 of the plaint also, therefore, the amendment cannot be allowed at this stage particularly when the plaintiffs have already concluded their evidence.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakham**  
**Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors.**  
**(2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi,**  
**AIR 2006 SC 1647.**

[13]. 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 enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[14]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not satisfied, the amendment cannot be allowed. This is the basic

test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way it is intended to send a message to the parties to be careful while drafting the original 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 of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In **Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27**, the Hon'ble Apex Court highlighted the aforesaid principles to be followed meticulously.

[15]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of 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 original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite 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. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[16]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment.

The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari**

**Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[17]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or *mala fide* in nature? The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009(1) RCR (Civil) 763**, the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844**, **Kailash vs. Nanhku and ors., (2005) 4 SCC 480**, and **Rajesh Kumar Aggarwal's case (supra)** reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the

proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078** held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse. The Court must do full and complete justice between the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court**.

[18]. Evidently, as per para No.6 of the plaint, the plaintiffs have pleaded the factum of sanctioning of mutation on the basis of Will as well as natural succession. Plaintiffs have already

concluded their evidence. The proposed amendment is only to the effect that the plaintiffs proposed to define the land under mutation by their numbers without changing any nomenclature of the land. Plaintiffs do not want to lead any further evidence in respect of proposed amendment. Only number of the property would be given so as to give elaboration to the description of the property with reference to its number as per record. The legal proposition as defined in the precedents cited by learned counsel for the respondents cannot be denied, but each case has to be decided on its own fact. By way of proposed amendment, the plaintiff/petitioners do not wish to change the nature of the property. The proposed amendment is just an elaboration of facts and description of the suit property. Defining the property in terms of its number would not change the nature of the suit, nor the suit property would be changed by any necessary implication. Defendants are in the process of leading their evidence. They would be having adequate opportunity to repel the genuineness of the proposed amendment at the relevant stage. In my considered opinion, the proposed amendment would not give rise to any new case, thereby changing the cause of action.

[19]. For the reasons recorded hereinabove, the present revision petition is allowed. Impugned order dated 20.04.2017 passed by Civil Judge (Junior Division), Sunam is hereby set aside. Application for amendment of plaint under Order 6 Rule 17 CPC is allowed, however, subject to payment of costs of

Rs.15,000/- to be paid to defendants No.2 to 5. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context. It is made clear that no opportunity shall be granted to the petitioners to lead evidence in respect of amendment.

**(RAJ MOHAN SINGH)**  
**JUDGE**

08.08.2018  
Prince

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|---------------------------|--------|
| Whether Reasoned/Speaking | Yes/No |
| Whether Reportable        | Yes/No |