

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

**Civil Revision No.4369 of 2015
Date of Decision: 07.08.2018**

Suresh

.....Petitioner

Vs

Ramphal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 29.05.2015 passed by the Civil Judge (Sr. Divn.) Bhiwani vide which application under Order 6 Rule 17 CPC was dismissed.

[2]. Perusal of the record would show that the plaintiffs filed a suit for declaration and possession. Paras No.1, 2, 3, 4 and 6 of the plaint are reproduced hereasunder:-

"1. That father of the plaintiffs Sh. Gopal son of Sh. Binja Ram was owner of land measuring 16 kanals 0 marla in Khewat No.1275/886 Khatoni

No.1896/97 and ½ share in land measuring 15 kanals 16 marlas out of total land measuring 31 kanals 12 marlas in Khewat No.1272/884 Khatoni No.1892 situated in village Bawani Khera Tehsil Bawani Khera Distt. Bhiwani pertaining to Jamabandi for the years 1983-84.

2. *That father of the plaintiffs Gopal had two wives namely Santosh (deceased) and Mewa, from the wedlock of Gopal & Santosh plaintiffs and performa defendant have been born out and the defendants have been born out from the wedlock of Gopal and Mewa.*
3. *That father of the plaintiffs Gopal was under influence of Mewa and defendants and the mother of plaintiffs Santosh had died intestate but the land owned by the father of the plaintiffs has wrongly been entered in the name of defendants in equal share, whereas the same shall have to devolved upon the plaintiffs, performa defendants and defendants in equal share, the plaintiff were minor at the time of death of their father.*
4. *That the defendants with collusion of Revenue Authority by procuring false documents and by mis-representation had got the land of the father of the plaintiffs got entered in their names wrongly and illegally excluding the plaintiffs by concealing true and material facts and the same is depicting in the revenue record that is liable to be corrected in equal share to the heirs of father of the plaintiffs.*

6. *That the wrong revenue record came in the knowledge of the plaintiffs in Jan. 2010 when the defendants dispossessed the plaintiff and thereafter the plaintiffs requested the defendants to get the revenue record corrected in favour of all the legal heirs of father of the plaintiffs in equal share but the defendants have deferred the matter on one pretext or the other and ultimately a week ago they refused to do so with the same."*

[3]. Defendants contested the suit by way of filing written statement wherein factum of passing of civil court decree dated 06.09.1986 by the Sub-Judge, 1st Class, Bhiwani in a Civil Suit No.174 of 1986 titled '*Ramphal vs. Smt. Santosh etc.*' was pleaded. The suit was filed on 19.05.2010 and written statement was filed on 06.10.2010. The plaintiffs filed replication wherein factum of civil court decree dated 06.09.1986 was denied.

[4]. The trial Court framed issues and thereafter plaintiffs' evidence was concluded on 24.04.2012. Thereafter plaintiffs sought to withdraw the suit by way of moving an application for withdrawal of the suit with permission to file fresh suit on the same cause of action. The said application was rejected by the trial Court on 17.12.2013. However passing reference was made that the plaintiff has a proper remedy to seek amendment of the pleadings to the said effect. Thereafter, the application for amendment of the plaint came to be filed on 27.04.2014.

[5]. Learned counsel for the petitioner submitted that the nature of the suit will not be changed and at the time of dismissing the prayer for withdrawal of the suit with liberty to file fresh, the trial Court observed that the plaintiff have a remedy to seek amendment in the plaint.

[6]. Learned counsel for the respondents vehemently opposed the prayer on the ground that the challenge to the decree by way of proposed amendment has become time barred. It is settled principle of law that all bona fide amendments are to be allowed. The cause of action which has become barred by limitation is not to be allowed in normal circumstances. Plaintiffs have already closed their evidence and as per evidence led by the plaintiffs, the ancestral nature of the land has not been proved with reference to any excerpt prepared by the Sadar Kunungo. At this stage, if the amendment is allowed, there would be *de novo* proceedings as the plaintiffs would ask for opportunities to lead evidence in proving the proposed amendment/decreed and the evidence led by the plaintiffs would again be subjected to judicial scrutiny. Under the garb of such proposed amendment, the plaintiffs would improve their case which would be prejudicial to the case of defendants.

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

counsel for the parties.

[8]. It is true that prayer for all bona fide amendments should be accepted. Rule of amendment is essentially a rule of equity and good conscience. The jurisdiction has to be exercised in the larger interest of doing complete justice between the parties. All bona fide amendments should be allowed unless and until it causes material prejudice to the opposite party.

[9]. In the instant case, since the plaintiffs have already led their evidence, the nature of suit being ancestral would be the subject matter of evidence led by the plaintiffs. The proposed amendment relates to incorporation of a plea to challenge the civil court decree of the year 1986. The cause of action for challenging the said decree is pleaded to be time barred. The amendment in question cannot be held to be bona fide as the earlier prayer for withdrawal of the suit for filing fresh suit on the same cause of action was declined by the trial Court.

[10]. Factum of decree of the year 1986 was specifically pleaded in the written statement and the plaintiffs despite knowledge of the said fact proceeded to deny the factum of civil court decree in their replication. The said exercise was done in the year 2010 and 2011. The filing of application on 27.01.2014 for amendment of the plaint, in my considered opinion is not an

act of bona fide at the instance of the plaintiffs. The amendment would cause material prejudice to the respondents as there would be a total *de novo* trial and there is every likelihood that the plaintiffs may improve their case after coming to know the defence of the defendants.

[11]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned order passed by the trial Court while dismissing the application under Order 6 Rule 17 CPC. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

August 07, 2018	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No