

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4206 of 2018

Date of Decision: 05.07.2018

Harpal Singh

.....Petitioner

Vs.

Jagseer Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Raman Mohinder Sharma, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the petitioner-plaintiff submits that the impugned order does not take into consideration the fact that the nature of a suit would not change with the amendment in the plaint being allowed, as the suit filed by the petitioner is one seeking a declaration to the effect that he is the owner of the suit land and further seeking a decree of permanent injunction that the first defendant in the suit be restrained from alienating that part of the suit land (as has been detailed in the heading of the plaint) and further, from dispossessing the plaintiff therefrom.

It has been specifically observed in the impugned order dated 14.05.2018, that the suit was instituted on 12.04.2014 and on the date the application seeking an interim injunction was decided, with it posted for evidence of the plaintiff vide an order dated 18.12.2015 (i.e. 3½ years ago).

Thereafter, the plaintiff examined four witnesses to prove his case and then moved the application for amendment.

It has also been stated in the impugned order that no date whatsoever has been given in the application as to when the plaintiff (petitioner herein), was

dispossessed from the suit land (he obviously having been in possession thereof, that having been specifically stated in the plaint itself).

The factum of the defendants being in joint possession of the suit land was also obviously to the knowledge of the petitioner as he was in possession thereof, with him seeking a declaration 'against' defendant no. 1, who is his nephew (cousins' son), and in any case no averment made to the effect that he was not of such knowledge.

Consequently, the suit having remained pending for about 04 years when the application for amendment was filed, very obviously, it is only to delay the proceedings and for no other reason.

Learned counsel for the petitioner has cited a judgment of the Supreme Court in **Harnek Singh** vs. **Pritam Singh** 2000 (4) RCR (Civil) 696, wherein though an interim order was passed in favour of the plaintiff in that case in the year 1986, it was specifically averred in the application for amendment that during the institution of the suit the plaintiff had been dispossessed, and as such he be allowed to amend the suit, seeking possession, which learned counsel for the petitioner submits that the present petitioner has also averred, though with no date of such dispossession given.

Having considered the aforesaid too, in my opinion, this petition does not deserve to be allowed. The learned Civil Judge having considered all aspects of the case, also referring to a judgment of the Supreme Court in **Revajeetu Builders and Developers** vs. **Narayanaswami and Sons** 2010 (1) CCC 1, wherein the following principles for allowing an amendment in the plaint have been laid down:-

“(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

- (2) *Whether the application for amendment is bona fide or mala fide;*
- (3) *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) *Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) *Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case and*
- (6) *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

Learned counsel has further submitted that the amendment would not delay proceedings in view of the fact that the petitioner seeks to lead no evidence even with regard to the prayer sought to be added for joint possession of the suit land.

As regards the contention that the proceedings would not be delayed because the petitioner wishes to lead no evidence with regard to joint possession, I do not agree with the contention; firstly for the reason that delay would still occur because the defendant would then necessary need to file a written statement in reply to the amended plaint; and further, it would not serve any purpose to amend the plaint without leading evidence, as the petitioners' specific contention now is that he has been dispossessed. Naturally, without leading any evidence in support of such contention (if it is true), there would be no purpose in amending the plaint.

That being so, for the reason already stated hereinbefore, that the application for amendment has been filed four years after the suit was instituted and there being no averment as to when the petitioner-plaintiff was dispossessed, I see no reason to interfere in the impugned order, on an application filed which obviously seems to be to delay proceedings in the suit.

Consequently, this petition is dismissed.

July 05, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes