

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

**CR no.449 of 2018(O&M)**

**Date of Decision: 19.12.2018**

Dharam Pal and others

...Petitioners

Vs.

Rekha Rani and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. A.K. Khubbar, Advocate, for the petitioners.  
Mr. Satish Chaudhary, Advocate,  
for the caveators-respondents.

**Amol Rattan Singh, J (Oral)**

By this petition, the petitioners challenge the order of the learned appellate court dated 13.12.2017 (Annexure P-6), dismissing an application filed by them under Order 6 Rule 17 of the CPC, seeking to amend their written statement at the stage of the appeal.

2. The short background to the matter is that upon a suit having been instituted by the respondents-plaintiffs (sister and mother respectively of the petitioners-defendants), seeking partition of the suit property that is contended to have devolved upon them upon the death of the father of (the rest of) the parties to the *lis* (husband of respondent no.2 herein), that suit was decreed in favour of the respondents-plaintiffs by the learned trial court on May 07, 2015, against which judgment and decree an appeal has been filed by the present petitioners before the first appellate court.

The application for amendment of the written statement was filed on 31.08.2017, with the original written statement having been filed

before the trial court, as per the impugned order itself, on July 30, 2012, the suit having been instituted on 30.01.2012.

3. Vide the amendment sought in the written statement, the petitioners-defendants sought to plead that their father, Mam Raj, had executed two registered wills, one dated 17.08.1999 and the other dated 17.05.2004, before he died on October 6, 2004.

In the application for amendment (Annexure P-4), in paragraph 3 it has been stated as follows:-

“3. That while filing the written statement the appellants-defendants having knowledge that their father Shri Mam Raj executed a registered will on 17.08.1999 and according to that will one residential room was given to the respondents-plaintiffs for their residence only because at that time the respondent no.1 Rekha Rani was not agree for marriage at all.”

Thereafter, it is stated in paragraph 5 that one week prior to the application having been filed by petitioner no.1 herein, he was told by one Dashtrath Kumar, a witness to the will, that the petitioners' father had also executed a second will dated 17.05.2004, which was duly registered, upon the father coming to know that his daughter, Rekha Rani (respondent no.1 herein), had performed a marriage secretly with one Nand Lal. Therefore, Mam Raj had bequeathed all his property, including his residential property, to his sons, i.e. petitioners-defendants no.1 to 3.

Upon having come to know of the aforesaid fact (as contended), the petitioners are stated to have searched old papers

belonging to their father and found that in fact a registered will dated 17.05.2004 was lying in a box locked by their mother, respondent no.2.

Consequently, the plea taken was that the said will not being in the knowledge of the petitioners till one week before the filing of the application in the year 2017, (the contention obviously being that the key to the box was with respondent no.2), the factum of that registered will having been executed by Mam Raj could not have been taken at an earlier point of time and therefore, the application seeking amendment should be allowed.

4. A reply having been filed to the aforesaid application, by the respondents-plaintiffs, it is first seen to be pleaded therein that in an earlier *lis*, the respondents-plaintiffs were held entitled even to 1/3<sup>rd</sup> of agricultural land (as had belonged to Mam Raj) (that suit being a suit seeking a declaration to that effect filed by the plaintiffs in the present *lis* also).

Other than that of course it has been stated that the plaintiffs have a complete right in the residential property in question and that in any case at this belated stage, the amendment can not be allowed.

5. The learned appellate court having considered the pleadings of both the parties, came to a finding that it was not acceptable that the petitioners would have no knowledge of a second will executed by their father for about 7 years after he died, and that suddenly in the year 2012 they would come to know of such will, on the basis of which they wished to amend the written statement at the stage of the appeal.

It was further noticed that in the original statement, even the factum of the earlier registered will dated 17.08.1999 had not been

mentioned.

Thus, holding as above, the application was dismissed.

6. Before this Court, learned counsel for the petitioners reiterates what is stated in the application filed under Order 6 Rule 17 CPC, to the effect that the petitioners not having any knowledge of the second will in view of the foregoing circumstances (that it was lying in a locked box, with the keys lying with their mother, who is one of the respondents-plaintiffs), there was naturally no occasion for them to refer to that will in the original written statement till now.

Learned counsel for the petitioner relies upon a judgment of the Supreme Court in the case of **Mahila Ramkali Devi & others v. Nandram (D) through LRs & others**, 2015(3) CCS 332 (SC), from which he points specifically to paragraph 20, which reads as follows:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of costs.”

He also refers to another judgment of the Supreme Court in **Usha Balashaheb Swami and others v. Kiran Appaso Swami & others**,

2007(2) RCR (Civil) 830, from which he points to paragraphs 17 to 20, which read as under:-

“17. Before dealing with the question whether the amendment sought for was rightly rejected by the High Court or not, we may first consider the principles under which amendments of pleadings can be allowed or rejected. The principle allowing or rejecting an amendment of the pleadings has emanated from Order 6 Rule 17 of the Civil Procedure Code, which runs as under:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary *for the purpose of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

18. From a bare perusal of Order 6 Rule 17 of the Civil Procedure Code, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

19. It is now well-settled by various decisions of this Court as well as those by High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a *bona fide* one. In this connection, the observation of the Privy Council in the case of *Mashwe Mya v. Maung Mo Hnaung* (AIR 1922 Privy Council 249) may be taken note of. The Privy Council

observed:-

“All Rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercise, but nonetheless no power has yet been given to enable one district cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit.”

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.”

7. Learned counsel for the respondents on the other hand reiterates the reasoning given by the learned appellate court while dismissing the application, and submits that no error has been committed by that court.

8. Having considered the contention of the parties, as also the impugned order and having also gone through the application filed under Order 6 Rule 17 CPC, what is first to be noticed by this Court is that in paragraph 3 of that application, as has been reproduced herein above, the petitioners specifically acknowledged having knowledge of what is stated to be a registered will dated 17.08.1999. By that will, even as per the

petitioners, a one residential room was stated to have been given to the respondents-plaintiffs for their residence, because at that time respondent no.1, Rekha Rani, was not agreeing to get married.

Yet, even having knowledge of that registered will, the petitioners herein deliberately chose not to refer to it in the original written statement, obviously for the reason that at least a life interest had been given to respondent no. 1 in a part of the residential house.

Though learned counsel for the petitioners has submitted that the second will of the year 2004 was obviously executed because Rekha Rani is alleged to have got secretly married to a person against the wishes of her father, and therefore he changed his will, I am not inclined to interfere with the impugned order, in view of the fact that knowledge of the first registered will (as is claimed to have been executed by Mam Raj, as per the petitioners) was very obviously deliberately withheld by them, at the time when the original statement was filed.

Therefore, even for the sake of arguments, if it is to be believed that the second registered will, allegedly executed and registered in the year 2004, came to their knowledge only a week prior to the application under Order 6 Rule 17 having been filed, in which will also the will dated 17.08.1999 is stated to have been referred to by the executant, the petitioners being guilty of deliberate concealment from the Court, of the first will, cannot be allowed to take advantage of their alleged knowledge of the 2<sup>nd</sup> will having been gained only one week prior to the application having been filed (as per their contention), which of course is also highly

suspicious in the circumstances.

Though learned counsel has made a 'last ditch' effort to submit that in any case simply by allowing the amendment the will would not stand proved, yet in the aforesaid circumstances, with a deliberate concealment having been made with regard to the first registered will (even as per the petitioners' own admission), the contention that the second will also came to their knowledge only one week prior thereto, cannot be accepted to be correct.

Consequently, with the proviso to Order 6 Rule 17 also specifically stipulating that an amendment, after the trial has started, shall only be allowed if the applicants can prove that they had no knowledge of the fact in respect of which an amendment is sought, prior to that, and this Court having also found (as did the appellate Court) that the petitioners definitely did have knowledge, as per their own admission, of at least one will, with the second contention with regard to recent knowledge gained also being highly doubtful, in my opinion the learned appellate court did not err in dismissing the application.

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

**19.12.2018**  
vcgarg/nitin

**(Amol Rattan Singh)**  
**Judge**

**Whether speaking/reasoned : Yes**  
**Whether reportable : Yes**