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

**Civil Revision No.4941 of 2014 (O&M)
Date of Decision: 04.07.2018**

ASHOK KUMAR AND OTHERS

.....Petitioners

Vs

CHET RAM AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sushil Bhardwaj, Advocate
for the petitioners.

Mr. Parteek Mahajan, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have preferred this revision petition against the order dated 03.07.2014 passed by the Addl. Civil Judge (Sr. Divn.) Narnaul whereby prayer for amendment of the plaint in terms of Order 6 Rule 17 CPC was declined.

[2]. Brief facts are that initially a suit for declaration with consequential relief of permanent injunction was filed by the plaintiffs. The suit was filed on 24.01.2008. Evidence of the plaintiffs has already been concluded. When the case was fixed for evidence of the defendants, the application was filed by the plaintiffs for amendment of the plaint to incorporate plea of

possession i.e. if the plaintiffs are not proved to be in possession of the suit property during trial, then alternate relief of possession is sought to be incorporated.

[3]. The prayer was opposed by the defendants on the ground that no such amendment can be allowed after commencement of the trial.

[4]. After due contest before the trial Court, the prayer for amendment of the plaint was declined.

[5]. Learned counsel for the plaintiffs/petitioners submitted that all *bona fide* amendments should be allowed. A simpliciter suit for declaration is not maintainable in view of Section 34 of the Specific Relief Act. In case plaintiffs are not found to be in possession, the alternate relief can be inserted for which there is no prohibition upon the plaintiffs from seeking amendment in the plaint to include unsought relief provided the same is saved by limitation.

[6]. Learned counsel also submitted that Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves to the Court to order amendment in the pleadings. The second part is imperative and enjoins the Court to allow all amendments which are necessary for real determination of the issues. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party which cannot not

be compensated in terms of cost or would deprive the opposite party of a valuable right which has accrued to him with the passage of time.

[7]. Learned counsel further submitted that the relief of possession as sought to be incorporated is not time barred at the time of filing of application for amendment of the plaint. However, the proviso to Rule to some extent curtails the absolute discretion of the Courts to allow amendment at any stage, however the knowledge and diligence are the consideration on which *bona fide* of a 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 *bona fides* amendments which are necessary for determination of real controversy between the parties. Reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[8]. Learned counsel by relying upon **Venkatarama and others vs. Vidyane Doureradjaperumal (D) Thri. Lrs. And others, 2013(3) R.C.R. (Civil) 176** also contended that the proposed amendment thereby incorporation of relief of possession is not barred by limitation at the time of filing of

application, therefore, unsought relief is not prohibited as it would facilitate the Court to decide the controversy in an effective manner and would also avoid multiplicity of the litigation.

[9]. As against this, learned counsel for respondents No.1 to 4, by relying upon the amended provision contended that the amendment in question cannot be allowed after commencement of the trial. The exercise in terms of Order 6 Rule 17 CPC should be made with great caution and should be exercised very sparingly. Learned counsel relied upon **Revajeetu Builders and Developers vs. Narayanaswami and sons and others, 2010(1) RCR (Civil) 27.**

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

[11]. Evidently, the relief of possession at the time of filing of application is not time barred as the case is still at the stage of defendants evidence. Plaintiffs have sought for amendment of plaint by taking alternate plea of possession. The suit is based on inheritance. 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 so as to subserve the cause of justice and to avoid 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. The object of the Rule is that the Court should be satisfied on merits of the case. The aforesaid principle was reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903** and again in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965.**

[12]. Looking to the controversy, I am of the view that the amendment in question can be allowed and for the delay caused by the plaintiffs in moving the application after six years of filing of the suit, the respondents can be compensated with adequate cost.

[13]. In view of above, the impugned dated 03.07.2014 passed by the Addl. Civil Judge (Sr. Divn.) Narnaul is hereby set aside. This revision petition is allowed, however subject to payment of Rs.25,000/- as costs to be paid to the respondents. The payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

July 04, 2018

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No