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

**Civil Revision No.6281 of 2018
Date of Decision:19.09.2018**

Nirmal Kaur and another

.....Petitioners

Vs

Daler Singh and others

....Respondents

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

Present:Mr. S.S. Gill, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 23.08.2018 passed by the Addl. Civil Judge (Sr. Divn.) Pehowa, vide which application for amendment of the written statement was dismissed with costs.

[2]. Perusal of the record would show that a suit for declaration and permanent injunction was filed by the plaintiffs/respondents against the defendants/petitioners. Gurbachan Kaur was the original owner. Her property was inherited by the defendants being daughters vide mutation No.1391 which was sanctioned in the presence of the plaintiffs. Plaintiffs No.1 to 4 are the grand sons and grand daughters of

Gurbachan Kaur. Plaintiff No.5 is widow of son of Gurbachan Kaur i.e. daughter-in-law. Plaintiffs No.6 and 7 are son and daughter of the Gurbachan Kaur. Defendants No.1 and 2 are also daughters of Gurbachan Kaur.

[3]. Perusal of the aforesaid relationship would show that the dispute is *inter se* between the family members. The dispute was sought to be settled in the Panchayat which was convened with the concurrence of the parties, wherein defendants agreed to transfer 21 *Kanals* of land in favour of the plaintiffs. As a result of the aforesaid, Panchayat proceedings, 21 *Kanals* of land was transferred in favour of plaintiffs No.1, 2, 6 and 7 vide two registered relinquishment deed dated 11.09.2006. The aforesaid transfer was intended to satisfy the claim of the plaintiffs in the estate of Smt. Gurbachan Kaur.

[4]. Again a dispute arose and the same was again referred to the Panchayat which the Panchayat could not mediate. Defendants sought to challenge the relinquishment deed. Again a Panchayat was held in the year 2017, whereby civil suit filed by the parties was agreed to be withdrawn. As a result of aforesaid consensus between the parties, civil suit filed by the defendants was got dismissed in default but the plaintiffs did not withdraw their suit.

[5]. As per stand taken by the petitioners, the aforesaid facts were disclosed to the counsel at the time of filing of the written statement, but the counsel could not plead the said facts in the written statement. The petitioners sought to incorporate these facts in paragraph No.8 of preliminary objection by way of proposed amendment in the written statement. Perusal of the record would further show that the suit was filed on 13.09.2013. Defendants filed the written statement on 20.02.2014. Thereafter, issues were framed on 24.03.2014 and evidence of the plaintiffs started and the same was ultimately closed on 17.08.2017.

[6]. At the time of leading evidence by the plaintiffs, the aforesaid facts were duly in the knowledge of the defendants, but they did not file any such application. They allowed the plaintiffs to lead their evidence on the basis of pleadings of the parties. Plaintiffs led the evidence on the basis of foundation made by the parties in terms of the pleadings. After closure of plaintiffs' evidence, the case was fixed for defendants' evidence. At that stage, the application in question came to be filed on 14.09.2017. It appears that the proposed amendment is not *bona fide* in nature. The alleged incriminating facts were already in the knowledge of the defendants. Defendants allowed the proceedings to go on. Plaintiffs' evidence was closed on the

basis of the pleadings made by the plaintiffs in the plaint as well as by considering the stand taken by the defendants in the written statement.

[7]. The Court has to justify whether the proposed amendment is *bona fide* or not. All *bona fide* amendments are to be allowed and the Court should satisfy itself whether such an amendment is necessary for determination of the real controversy in issue. The potentiality of prejudice likely to be caused to the either side has also to be appreciated. The principles on which amendment can be allowed are summed up in the following manner:-

- 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?

[8]. 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 but at the same time *mala fide* and dishonest amendment should be refused. The stage of the litigation is also a relevant factor for considering *bona fide* and *mala fide* character of the amendment. The exercise in terms of Order 6 Rule 17 CPC has to be undertaken with great caution and should be exercised very 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.

[9]. In **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, the Hon'ble Apex Court held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be declined.

[10]. The amendment sought by the defendants should not be based on falsehood. Though the amendment at a belated stage cannot be declined, merely because it is sought at the belated stage, but the prejudice in terms of a legal implication cannot be over looked, if the cause of action as on the date of filing of the application for amendment is time barred, then such amendment should be discouraged.

[11]. For the reasons recorded above, no infirmity is found in

the impugned order. This revision is accordingly dismissed being devoid of merits.

September 19, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No