

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

Zora Singh and othersPetitioners
Vs
Dharam Singh @ LeelaRespondent

“Learned counsel for the petitioners contends that in the suit for permanent injunction filed by the plaintiffs-petitioners, pursuant to the sale deed dated 05.05.1989, the plaintiffs have led evidence by examining one Vimal Kumar Jain (PW-4), wherein he has specifically stated that the sale deed in favour of the plaintiffs was of 7 Marlas of

land. He has also specified the boundaries of the plot. Sale deed has been exhibited as Ex.PW4/1. Pursuant to the sale deed (Annexure P-3), even if Khasra number has been mentioned in the plaint, the measurement of plot of 7 Marlas is required to be defined along with the boundaries and this amendment for correct decision of the suit could have been made at any stage of the trial.

Notice of motion for 19.11.2015.

Passing of final order by the trial Court shall remain stayed in the meantime.”

[3]. Brief facts of the case are that plaintiffs filed a suit for permanent injunction on the basis of sale deed dated 05.05.1989 having purchased the suit land from Janak Modi wife of Davinder Kumar. The *khasra* numbers were shown in the plaint in respect of suit property with reference to *jamabandi* for the year 2010-11. Plaintiffs also pleaded that they were recorded as owners in possession of the suit property in the revenue record viz. *khasra girdawaries* and have been shown to be in actual cultivating possession. In the sale deed, dimensions of the property have been mentioned. Sale deed has already been exhibited on record as Ex.PW-4/1 i.e. in the statement of Vimal Kumar Jain as PW-4.

[4]. Learned counsel for the petitioners submitted that the trial of the suit has reached to the stage of rebuttal evidence (if any) and arguments. By way of proposed amendment, the

plaintiffs/petitioners sought to incorporate dimensions of the suit property as shown in the sale deed which has already been exhibited on record. Petitioners claimed the proposed amendment to be an elaboration of facts in order to project the case in a better way. It is settled principle of law that all *bona fide* amendments can be allowed.

[5]. Learned counsel by relying upon **Satguru Sri Jajit Singh Ji vs. Gurjeet Singh @ Harcharan Singh and others, 2006(2) R.C.R. (Civil) 71; Balbir Singh vs. Kashmiri Lal, 2006(4) R.C.R. (Civil) 456; Anant Ram vs. Hans Raj and others, 2012(5) R.C.R. (Civil) 609; Narinder Singh vs. Manjit Kaur, 2010(1) PLR 324 and Sajjan Kumar vs. Ram Kishan, 2015(13) SCC 89** contended that the amendment in question for incorporation of particulars of land can be allowed even at the belated stage as the omission in mentioning the dimensions was not such by which plaintiffs were to gain anything illegal. For elaboration of pleadings without leading any further evidence would be in consonance with the requirement of the case and that would facilitate the Court to pass appropriate orders.

[6]. Learned counsel for the respondent has opposed the arguments of learned counsel for the petitioners and submitted that the amendment cannot be allowed at this fag end of the trial

as it would change the nature of the suit and would cause material prejudice to the defendant. He relied upon **Kamaljit Singh vs. Smt. Swarn Arora, 1998(2) R.C.R. (Civil) 562** and **Arya Mittar and Anr., vs. Dr. Ashok Kumar Goel, 2010(39) R.C.R. (Civil) 246.**

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

[8]. Perusal of precedents cited by learned counsel for the respondent would not cover the controversy in issue. **Kamaljit Singh's** case (supra) was in respect of the facts where the proposed amendment was aimed to change the nature of the suit and the same was held to be an act of filling lacuna in the case. Whereas **Arya Mittar and Anr.'s** case (supra) was a case of amendment of written statement at an appellate stage. The facts involved in the said case are not attracted to the controversy involved in the present case.

[9]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the 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 amendments which may be necessary for determination of real controversy between the parties. In this regard 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.**

[10]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms

of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[11]. Before the amendment can be allowed, the Court should satisfy itself where such an amendment is necessary for determining real issues in controversy. If such condition is not satisfied, the amendment cannot be allowed. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no injustice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendments of written statement is more liberally construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way it is

intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment following principles are required to be taken into consideration:-

- 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?

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 and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly

in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised 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.

[12]. 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 and it should be allowed if the same subserves the cause of justice and avoids 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 to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[13]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965,** held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[14]. However, it is equally important to see that the

amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or *mala fide* in nature? The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009 (1) RCR (Civil) 763**, the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844**, **Kailash vs. Nanhku and ors., (2005) 4 SCC 480**, and **Rajesh Kumar Aggarwal's** case (supra) reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow

amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005 (3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh, 2010(1) Apex Court Journal 0078** held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse. The Court must do full and complete justice between the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court**.

[15]. The analogy has been considered in catena of precedents as discussed above. The finding cannot be recorded in isolation as this Court considered the issue in detail on the strength of precedents mentioned in the preceding paras,

therefore, the proviso to Order 6 Rule 17 CPC has to be construed in the given situation in order to ascertain the proposed amendment is necessary for just decision of the case or not?

[16]. In view of above, this revision petition is accepted. The impugned order dated 15.09.2015 passed by Civil Judge (Jr. Divn.) Samana is set aside. The application filed by the plaintiffs/petitioners under Order 6 Rule 17 CPC for amendment of the plaint is allowed, however subject to payment of costs of Rs.15,000/- to be paid to the defendant. It is made clear that the plaintiffs/petitioners would not be entitled to lead any evidence in furtherance of the amendment allowed by this Court. The case is already fixed for rebuttal evidence (if any) and arguments. The trial Court would take into consideration the amendment in question only for the purpose of elaboration of the facts with reference to sale deed in question and would decide the controversy strictly in accordance with law.

[17]. The payment of costs shall be the condition precedent for allowing indulgence by the trial Court in the aforesaid context.

July 24, 2018

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/Nop