

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 23, 2018

1. Civil Revision No.6759 of 2017 (O&M)

Joginder Singh (deceased) through L.R.

...Petitioner

Versus

Swaranbir Kaur & others

...Respondents

2. Civil Revision No.6647 of 2017 (O&M)

Joginder Singh (deceased) through L.Rs

...Petitioners

Versus

Swaranbir Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Divanshu Jain, Advocate,
for the petitioner in CR No.6759 of 2017

Mr.G.S.Bedi, Advocate,
for the petitioner in CR No.6647 of 2017.

Mr.Jagjot Singh, Advocate for
Mr.Kunal Dawar, Advocate,
for respondent No.1 in both the cases.

Mr.IPS Parmar, Advocate,
for respondent No.2 in both the cases.

AMIT RAWAL, J.

This order of mine shall dispose of two Civil Revision Petitions bearing No.6759 and 6647 of 2017 as the common questions of law and fact are involved. The facts are being taken from CR No.6759 of 2017.

Civil Revision No.6759 of 2017 is preferred by one set of legal

heir of Joginder Singh defendant No.1 and Civil Revision No.6647 of 2017 is filed by another set of legal heirs against the impugned order dated 19.8.2017, whereby application submitted by respondent No.1, namely, Swaranbir Kaur (defendant No.2), under Order 6 Rule 17 CPC for amendment of the written statement, has been allowed.

It would be relevant to state few facts, which are essential and necessary for the adjudication of the present revision petitions.

Pritpal Singh respondent No.2-plaintiff instituted Civil Suit No.215 of 14.3.2015 against Joginder Singh (since deceased) seeking declaration to the effect that he was owner in possession of certain properties mentioned in the suit, claiming them to be HUF properties of his father Mahant Santokh Singh and as well as for a decree for separate possession by way of partition of the property by metes and bounds, for rendition of accounts pertaining to the businesses/firms and consequential relief of permanent injunction restraining the defendants therein from making any additions, alterations in any part of the properties and also from alienating the same in any manner.

During the pendency of the suit, Joginder Singh passed away on 25.1.2014 and two sets of petitioners were impleaded as his legal representatives. In the written statement filed by late Joginder Singh as well as the legal heirs, the existence of HUF of late Santokh Singh was specifically denied, much less the same being taken over by the Karta. Even a counter claim was also filed by the representatives of defendant No.1 that in case the Court comes to a conclusion that all the properties are joint Hindu family properties, the defendant would be entitled to claim the due share.

Petitioner-defendant No.V also filed a separate written statement (Annexure P-3). Replication was also filed.

During the pendency of the suit, Swaranbir Kaur, daughter of late Mahant Santokh Singh and sister of plaintiff Pritpal Singh and defendant late Joginder Singh filed a separate Civil Suit No.918 of 2010 at Delhi for partition with possession, rendition of accounts and perpetual injunction in respect of the properties subject matter of the suit pending at Ludhiana. In that suit, it was specifically pleaded that the properties were HUF and claimed her right as a part of the HUF.

During the pendency of the suit at Ludhiana, Joginder Singh submitted an application under Section 10 of the Civil Procedure Code for staying of the suit owing to the pendency of the suit at Delhi, but the same was dismissed by the High Court of Delhi vide order dated 9.8.2012. During the adjudication of the said application, counsel for the plaintiff had made a specific averment that instructions would be sought regarding her impleadment in the suit pending at Ludhiana. Thereafter, Swaranbir Kaur also moved an application under Order 1 Rule 10 CPC dated 28.3.2017 for impleading herself as defendant in the suit pending at Ludhiana. The said application was allowed vide order dated 27.4.2017.

In pursuance to the aforementioned order, Swaranbir Kaur filed a written statement dated 1.5.2017, wherein it was specifically claimed that the properties mentioned in the suit were purchased out of the nucleus of the joint family funds and, thus, she was entitled to her share being a member of HUF and partition by metes and bounds, much less rendition of accounts. In other words, Swaranbir Kaur supported the case of the plaintiff.

Plaintiff Pritpal Singh in the suit pending at Ludhiana, tendered

into evidence his affidavit dated 16.5.2017 and the matter was adjourned to 19.5.2017 for cross-examination of the plaintiff. The newly added respondent No.2 partly cross-examined plaintiff Pripal Singh and the suit was adjourned to 23.5.2017.

During the pendency of the suit, petitioner-defendant No.1(v) filed an application (Annexure P-11) for amendment of the written statement to bring on record subsequent fact of defendant No.2 having joined the litigation in collusion with the plaintiff.

Mr.Divanshu Jain, learned counsel appearing for the petitioner in CR No.6759 of 2017 submitted that as a counter blast to the aforementioned amendment sought by the legal representative of defendant No.1 Joginder Singh, the plaintiff moved the application for amendment of the plaint by which the plaintiff wanted to add para No.8-A mentioning therein that defendant No.2 had impleaded herself as a party in the present case in connivance with the legal representatives of the defendant. On the same day, defendant No.2 also filed an application under Order 6 Rule 17 CPC for amendment of the written statement by taking apposite stand that the properties listed out by the plaintiff were, in fact, acquired by the father of the parties and not purchased by the plaintiff or the defendant out of the HUF funds. It was a self-acquired property by the father of the parties late Santokh Singh. The said application was contested by filing reply and the same was erroneously allowed. The order under challenge is not sustainable as it tantamounts to withdrawal of the admission, which is not sustainable in the eyes of law.

No doubt, party to lis can not be allowed to be set up by way of amendment as, as per the amended provisions of Order 6 Rule 17 CPC,

there are different parameters of seeking amendment of the plaint vis-a-vis written statement. The averments in the plaint were on the premise that she came to know that the property was self-acquired, but there was no such pleading either in the plaint or in the written statement. In other words, it was submitted that an excuse was coined by moving an application, though there was no cause of action for seeking amendment of the plaint. The trial Court committed illegality and perversity in allowing the application and there is an apparent collusion between respondent No.1 and the plaintiff, who wanted to support the case of the plaintiff.

Similar is the argument of Mr.Gurmohan Singh Bedi with regard to the other revision petition.

Mr.Jagjot Singh, Advocate for Mr.Kunal Dawar, learned counsel for respondent No.1 submitted that the amendment sought to be incorporated is explanatory in nature and does not tantamount to change nature of the suit as the amendment would be subject matter of the evidence if both the parties would be leading evidence in support of their pleadings to prove the nature and character of the property in the manner and mode as has been sought. The order under challenge cannot be said to have been passed without any illegality or perversity and, thus, urged this Court for dismissal of the revision petitions.

Mr.IPS Parmar, learned counsel appearing on behalf of respondent No.2 submitted that plaintiff-respondent No.2 is not aggrieved of the order and, therefore, not filed the revision petition and he has no objection in case the application for amendment of written statement filed by defendant No.2 (respondent No.1 herein) is allowed.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is no force and merit in the submissions of Mr.Divanshu Jain and Mr.Gurmohan Singh Bedi, learned counsel for the petitioners. The law of amendment had been a matter of debate before almost every Court and much less the Hon'ble Supreme Court. However, Hon'ble Supreme Court in **Raj Kumar Bhatia Versus Subhash Chander Bhatia, (2018) 2 Supreme Court Cases 87** clearly laid down that the amendment sought to elaborate what was stated in written statement cannot be said to be causing any prejudice to the plaintiff. However, it is not a case where the plaintiff is prejudiced. It is only the co-defendant with legal heirs of defendant No.1 are prejudiced. Paras 12 to 14 of the same read thus:-

“12. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhna Lodh v National Insurance Company³, this Court has held that the 3 (2003) 3 SCC 524 9 supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the

amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the Plaintiff.

13. In the view which we have taken, it has not become necessary to consider the alternative submission of the appellant namely, that recourse taken to the jurisdiction under Article 227 by the respondent after filing an application for review before the Trial Court was misconceived. Since the matter has been argued on merits, we have dealt with the rival submissions.

14. Hence, on a conspectus of the facts and having due regard to the nature of the jurisdiction under Article 227 which the High Court purported to exercise, we have come to the conclusion that the impugned judgment and order is unsustainable. We accordingly allow the appeal and set aside the judgment of the High Court. The order passed by the Trial Court allowing the amendment of the written statement is accordingly affirmed.”

Since the legal representatives of defendant No.1 have taken a different stand in support of the plaintiff-defendant No.2 and it is common admission of both the parties that the issues have been framed and both the parties would be leading evidence in support of their defence in discharge of the onus and ultimately it would be in the domain of the trial Court to determine the nature and character of the property, I am of the view that the amendment if allowed would not tantamount to withdrawing the admission

as it is purely question of fact and law, to be decided at the relevant point of time.

For the reasons stated above, there is no illegality and perversity in the impugned order. No ground for interference is made out.

Revision petitions stand dismissed.

March 23, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No