

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

Civil Revision No.7444 of 2017 (O&M)

Date of Decision: December 13 , 2018

Rajesh Kumar and others

...Petitioners

Versus

Surmukhi Devi and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Pritam Singh Saini, Advocate
for the petitioners.

Mr.Jai Bhagwan Sharma, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

The plaintiffs have filed this revision petition impugning the order dated 25.9.2017 of the learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby, their application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint has been dismissed.

Jagdish was the owner of the suit property. He died leaving behind Surmukhi Devi his widow (defendant No.1), Baru Ram, Karnail Singh (defendant No.2) and Jarnail Singh, his sons. Baru Ram died on 8.4.2014 leaving behind plaintiff No.1, his son, plaintiff No.2 his daughter and plaintiff No.3 his widow as his legal heirs. Jarnail Singh has also died. His wife has also expired. Defendants No.3 and 4 are the minor son and daughter of deceased Jarnail Singh.

The plaintiffs filed a suit claiming that the suit property is

ancestral coparcenary joint Hindu Family property, in which plaintiffs No.1 and 2 had right by birth. Jagdish, grand-father of plaintiff No.1 and 2 and father in law of plaintiff No.3 expired on 10.07.2012 leaving behind the plaintiffs and defendants No.1 to 4 as his legal heirs. After the death of Jagdish, the plaintiffs and defendants No.1 and 4 are the joint owners in possession of the suit land. In June, 2014, defendant No.1 threatened to alienate and transfer the suit land to some other person. Defendants No.1 to 4 also threatened to interfere in the possession of the plaintiffs. Defendant no.1 claimed that she was the absolute owner of the suit land as deceased Jagdish had executed a registered Will dated 21.05.2012 in her favour and mutation No.1101 had also been sanctioned in her favour.

The suit property is detailed in the head note of the plaint which was instituted on 07.07.2014 as under:

“Suit for declaration to the effect that the plaintiffs are owners in possession of ¼ share in equal share, and defendant No.1 is owner in possession of ¼ share, defendant No.2 is owner in possession of ¼ share and defendants No.3 and 4 are owners in possession of ¼ share in equal share of the land standing in the name of Jagdish son of Kartara deceased in revenue record Jamabandi for the year 2012-13, bearing khewat/khatauni No.34/55 Khasra No.42//15/3, Khatauni No.56 Khasra No.42//15/4, Khewat/khatauni No.112/158 khasra No.43//20/1, 21/2, khatauni No.159 Khasra No.42//15/1, 43//20/2, 21/1, khatauni No.160 khasra No.43//11/2, khatauni No.161 khasra No.42//25 khatauni No.162 khasra No.42//15/2 khewat/khatauni No.118/172 khasra No.37//5/2, 6/1, khewat/khatauni No.231/354 khasra No.37//3/2/2, 4, khewat/khatauni No.233/356 khasra No.138 Khatauni No.357 khasra No.137 Khatauni No.358 Khasra No.31//23/1, khatauni No.359 Khasra No.31//22/2, situated in Vill. Musimbal Hinduan, HB No.371 Tehsil Jagadhri, vide Jamabandi 2012-13, with all rights appurtenant thereto, and further declaration to the effect that the alleged Will dated 21.5.2012 allegedly executed by Jagdish s/o Kartara Ram in favour of defendant No.1 is illegal, null & void, fraudulent document and is not binding on right of plaintiffs, and mutation No.1101 attested in favour of defendant No.1 on the basis of forged Will, and further revenue entries are also illegal, null & void and not binding on the right of plaintiffs, and for setting aside the same, and further declaration to the effect that Mortgage Deed dt.27.5.14 executed by defendant No.1 in favour of defendant No.5 is also illegal, null & void and not binding on the rights of plaintiffs, and for permanent injunction restraining the defendant No.1 from alienating, transferring the suit property by way of sale, mortgage, lease, decree, gift, release deed, Will or in any other manner and from creating any charge, encumbrances over the same, and further restraining the defendants No.1 to 4 from

interfering in possession of ¼ share of plaintiff over the suit land, and from cutting & removing the Popular trees standing in suit land.”

On 09.02.2017 the plaintiffs filed an application under Order 6 Rule 17 CPC for amendment of the plaint with the averment that residential house of the plaintiffs exists on the land bearing Khasra No.22//25. In December 2016, defendants No.3 and 4 through their natural guardian-defendants No.1 and 2 threatened to take possession of the house. They also stated that defendant No.1 had transferred the land measuring 11 Kanals 02 Marlas being ½ share of land measuring 22 Kanal 04 Marla bearing Khewat/Khatauni No.293/466 Khasra No.22//25, 35//5, 7, situated in village Musimbal Hinduan HB No.371 vide Jamabandi 2012-13 in favour of defendants No.3, 4 and Manjit- minor daughter of Karnail Singh. Thereafter, the plaintiffs contacted the Halqa Patwari, who informed that defendant No.1 had transferred the above land in favour of defendants No.3 and 4 as well as in the name of her grand-daughter Manjit d/o Jarnail Singh vide registered transfer deed dated 27.1.2015 and mutation No.1130 had been sanctioned in favour of the transferees. The plaintiffs immediately, thereafter, applied for and obtained a copy of Jamabandi of that property as well as the entire land standing in the name of Jagdish on 27.12.2016. They also obtained a certified copy of the transfer deed on 10.1.2017 and copy of the mutation No.1130 on 9.1.2017. Only then they got to know about the said transfer and mutation, and also the fact that the land bearing Khasra No.22//25, 35//5, 7 was also standing in the name of Jagdish- grand-father of plaintiffs No.1 and 2 to the extent of ½ share. They were not aware of this fact earlier as the revenue officials did not issue the Jamabandi for the entire

land standing in the name of Jagdish Ram in village Musimbal Hinduan. Hence, this land was not included in the plaint. Through the application the plaintiff sought to implead Manjit minor daughter of Karnail Singh as defendant No.6 and to incorporate a challenge to the transfer deed dated 27.1.2015 executed by defendant No.1 in favour of defendants No.3 and 4 and 6 in respect of land measuring 11 Kanal 02 Marlas being ½ share of 22 Kanal 04 Marlas. The said application has been dismissed by the impugned order.

The learned Trial Court dismissed the application holding (i) that the application had been moved after much delay at a stage when the case was fixed for documentary evidence of the plaintiffs, their oral evidence having been closed on 17.10.2016, (ii) the plaintiffs had not produced the document/Jamabandi earlier issued to them which according to them did not include the land now sought to be included. It was, thereby, concluded that the applicants had not been able to establish that despite due diligence, they could not incorporate at an earlier stage the facts sought to be incorporated through the application for amendment. It was also held that the amendment of the plaint would result in a *de novo* trial and that great prejudice would be caused to the defendants which could not be compensated in money.

Mr. Pritam Saini, Ld. Counsel for the petitioner-plaintiffs has assailed the impugned order, whereas, Sh. Jai Bhagwan Sharma, Ld. Counsel for the respondents has supported it. Mr. Saini has contended that allowing the amendment would not change the nature of the suit. It would not prejudice the respondent-defendants- in any manner. He further stated that no additional evidence is to be led.

The scope of the Order 6 Rule 17 of CPC (as amended) has been considered by Hon'ble Supreme Court in many cases. In ***Chakreshwari Construction (P) Ltd. v. Manohar Lal, (2017) 5 SCC 212*** it was observed as under:

“13. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In Revajeetu Builders and Developers v. Narayanaswamy & Sons [Revajeetu Builders and Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37], this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under:

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

14. Applying the aforesaid principle of law to the facts of the case at hand, we are of the considered opinion that the amendment proposed by the appellant so also the permission sought for filing additional documents deserved to be allowed.

15. It is for the reasons that firstly, the amendment proposed did not change the nature of the case originally set up by the appellant in the eviction petition; secondly, the amendment did not introduce any fresh cause of action; thirdly, the amendment was relevant for deciding the question of subletting and availability of alternative accommodation with the respondent; fourthly, the facts proposed in the amendment not being in the personal knowledge of the appellant and having obtained from the State Department concerned recently, the same could be allowed to be brought on record for its consideration; fifthly, no prejudice was likely to be caused to the respondent, if the applications had been allowed because the respondent in such eventuality would have got an opportunity to make consequential amendment in his written statement and file additional documents in rebuttal;

and lastly, in order to prove the case, the amendment proposed and permission to file documents should have been granted.

16. It is true that there was some delay on the part of the appellant in filing the applications but, in our opinion, the appellant had explained the delay. One cannot dispute that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of the parties involved in the lis."

In the present case, the claim of the plaintiffs in the suit is on the basis of inheritance. It is their categorical stand that they did not incorporate the land in the plaint as the record supplied to them by the revenue authorities did not include this land. They were under the impression that they had included the entire land owned by Jagdish in the suit. It is only when they were sought to be dispossessed from their house existing on land bearing Khasra No.22//25 in December, 2016 and defendants No.3 and 4 stated that defendant No.1 had transferred the land measuring 11 Kanals 02 Marlas being ½ share of land measuring 22 Kanal 04 Marla bearing Khewat/Khatauni No.293/466 Khasra No.22//25, 35//5, 7, situated in village Musimbal Hinduan HB No.371 vide Jamabandi 2013-13 in favour of defendants No.3, 4 and Manjit minor daughter of Karnail Singh that they learnt of the existence of this land in the name of Jagdish. Thereafter they immediately obtained copies of the Jamabandi, the transfer deed and mutation No. 1030 and filed the application for amendment.

There is no reason to doubt the version of the plaintiffs. There is no reason for them not to have included the entire land in the first place if the revenue officials had supplied them the details of the entire land owned by Jagdish. They cannot be denied their right merely for the fault of the revenue officials. Further the transfer dated 27.1.2015 and mutation No.

1030 is after the institution of the suit on 19.06.2014. For this reason also the application deserved to be allowed.

In ***Mohinder Kumar Mehra v. Roop Rani Mehra***, (2018) 2 SCC 132, allowed the amendment even after the commencement of trial considering that no additional evidence was to be led on the amended application. The Court observed as under:

“22. The proviso to Order 6 Rule 17 CPC prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could lead evidence, the amendment application has been filed and from the order dated 14-2-2014 [Mohinder Kumar Mehra v. Roop Rani Mehra, 2014 SCC OnLine Del 7618] , it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and the plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing of the amendment was a mere formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him.

23. *This Court in Chander Kanta Bansal v. Rajinder Singh Anand [Chander Kanta Bansal v. Rajinder Singh Anand, (2008) 5 SCC 117] has noted the object and purpose of amendment made in 2002. In para 13, the following has been held: (SCC p. 122)*

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

24. *Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case, no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We, thus, are of the view that looking to the purpose and object of the proviso, the present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the proviso.”*

In the instant case, Mr. Saini, Ld. Counsel for the plaintiff-

petitioner-plaintiffs has stated that consequent on the amendment no

additional evidence is to be led. Thus also, the apprehension that the amendment would result in delay and a *de novo* trial, is not justified.

Thus, this petition is allowed. The impugned order dated 25.09.2017 of the Ld. Civil Judge (Junior Division) Jagadhari at Yamuna Nagar is set aside. The application of the petitioner is allowed.

December 13, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

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