

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

CR-8480-2016 (O&M)

Date of decision : 27.3.2018

G.P.Realtor Pvt. Ltd

..... Petitioner

Versus

Munni Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjeev Sharma-I, Sr. Advocate with
Mr. Shekhar Verma, Advocate for the petitioner.

Mr. Amit Jain, Advocate for respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-4763-CII-2017

For the reasons mentioned in the application, LR's of respondent No. 2-Bir Singh, as mentioned in *para No. 2*, of the application are ordered to be brought on record. Amended memo of parties is taken on record.

Application stands disposed of.

CR-8480-2016

Impugned in the present revision petition is the order dated 2.12.2016 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Sohna, vide which an application filed by the plaintiffs-respondents for amendment of the plaint was allowed.

It comes out that plaintiffs-respondents filed a suit against the present petitioner-G.P. Realtor Private Limited for declaration with consequential relief of permanent injunction claiming that ancestor of the plaintiffs namely Roop Chand son of Maharaj, was in cultivating possession of the suit land as *gair morusi* for the last 50 years without paying any rent to its owners except the land revenue. Plaintiffs are successor in interest of said Roop Chand. Therefore, on the basis of the said pleadings prayer has been made seeking declaration that order dated 14.7.2010 passed by defendant-respondent No. 2 namely Naib Tehsildar, Sohna, District Gurgaon vide which suit land was partitioned is illegal. Similarly, order dated 17.6.2009 passed by defendant-respondent No. 3-Tehsildar Sohna, District Gurgaon vide which *khasra girdawari* has been changed regarding suit land in favour of defendant-respondent No. 1 is illegal and it should also be declared that plaintiffs became owner in possession of the suit land as their possession is continuous for last more than 30 years including the possession of their ancestor-Roop Chand without paying any rent except land revenue.

The suit was filed in the year 2011. Admittedly, in this case issues were framed and the trial has not yet commenced, when an application for amendment was moved to correct the name of Roop Chand to Uday Chand, son of Maharaj, it was further sought to be pleaded that plaintiffs have acquired the rights of occupancy as envisaged under Section 5 and 8 of the Punjab Tenancy Act, 1887 (for short 'the Act') and has become owner of the suit land and entries in the revenue record are liable to be corrected in favour of the plaintiffs.

Heard.

Learned counsel for the plaintiffs states that so far as correction of the name of Roop Chand to Uday Chand is concerned, he has no objection, accordingly, that part of the impugned order is upheld.

However, learned counsel for petitioner-defendant has opposed the prayer vide which amendment was allowed, allowing the plaintiff to plead that he has acquired the rights of occupancy as envisaged under Section 5 and 8 of the Act and has become owner of the suit land and entries in the revenue record are liable to be corrected in favour of the plaintiffs. He further contends that perusal of the entire plaint shows that plaintiffs-respondents claim that their ancestral was *gair marusi*, without paying any rent for last more than 50 years. In the pleadings, no amendment is sought to be made that the plaintiffs have acquired the occupancy tenant rights and are eligible under Section 5 and 8 of the Act, to be declared as owners. The pleadings remain the same that the plaintiffs are *gair marusi* for the last more than 50 years including his ancestors and have become owners thereof. Therefore, it is pleaded that a contradictory plea is sought to be raised.

On the one hand, plaintiffs want to claim that they are *gair marusi* and on the other hand, plaintiffs want to make a prayer that they should be declared owners as they are occupancy tenant.

It is to be noted in this case that though the Naib Tehsildar-respondent No. 2 is party but State Government is not party and for seeking any declaration for occupancy tenant, the State Government is the necessary party under Order XXVII Rule 5-A of the Code of Civil Procedure, 1908.

Learned counsel for the petitioner relies upon an authority of this Court delivered in CWP-20563-2008 titled as **Jaleb Khan and others versus Commissioner, Gurgaon Division, Gurgaon and others, 2009 (4) RCR (Civil) 385**, wherein it was held that the *gair marusi* tenant cannot acquire the status and rights of *marusi tenant* and these are two different pleas. Further reliance has been placed upon an authority of Hon'ble Supreme Court delivered in **2006 (2) RCR (Rent) 265** titled as **Baldev Singh and others versus Manohar Singh and another**, wherein it was held as under: -

15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the

written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of *M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co. [(1976) 4 SCC 320]*, this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.

It has been pressed that in the plaint contradictory plea cannot be allowed to be raised. On one hand, plaintiffs claim that they are *gair marusi* and on the other hand, they want to make a prayer to be declared as owners as they are occupancy tenant.

Admittedly, in this case, trial is yet to commence but I am of the view that without raising any specific plea as to how the plaintiffs have become occupancy tenant and how they have become the owners, merely by amending the prayer, the contradictory plea cannot be allowed to be raised so as to contradict the plea of *gair marusi* tenant being raised in the pleadings.

It being so, revision petition is partly allowed to the extent that amendment of the prayer clause sought by the plaintiffs, to acquire the rights of occupancy tenant that the plaintiffs have acquired the rights of tenancy under Section 5 and 8 of the Act and have become owner of the suit land and the entries in the revenue record are liable to be corrected in favour of the plaintiffs is set aside.

Since, the main petition has been partly allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

27.3.2018
preeti

Whether speaking / reasoned	Yes/No
Whether Reportable:	Yes/No