

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 949 of 2018

Date of Decision: 26.10.2018

Nirvail Singh

.....Petitioner

Vs.

Manjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manish Prabhaker, Advocate,
for the petitioner.

Mr. Parambir Singh, Advocate,
for respondents no. 1 to 3.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner (plaintiff in the suit out of which this petition arises), challenges the order of the trial Court [Civil Judge (Senior Division),] Tarn Taran, dated 22.08.2017, by which an application filed by the respondents-defendants under Order VI Rule 17 CPC has been allowed.

By the said application, the defendants had sought amendment of their written statement to the extent that an agreement of exchange dated 22.01.2001 that had earlier been denied to be existent by the defendants in the original written statement, was sought to be admitted as a document that was existent, with the circumstances of how that document came into being also sought to be given in the written statement.

The case of the petitioner-plaintiff in his plaint was that there was no such agreement of exchange entered into between the parties and if any exchange

deed dated 22.01.2001 was being relied upon by the respondents-defendants, it was a forged and fictitious document.

The respondents-defendants' stand in their original written statement, as already noticed, was that there was no agreement of exchange dated 22.01.2001, though there was an agreement of exchange dated 22.01.2000 which was entered into, with the lands actually exchanged and possession of the said lands having been delivered to the respective parties, with a mutation also entered at serial no. 2232, in the revenue record. However, for reasons best known to the Revenue Department, it was contended that the said mutation, though was present in the "*Parat Sarkar*" (the register of mutation with the Collector), was not entered into in the record of rights (*'Jamabandi'*).

In the amended written statement, the respondents-defendants however, stated that the Assistant Collector IInd Grade (one Sh. Gurmej Singh) was in possession of the original agreement of exchange dated 22.01.2000, he being the sanctioning authority for entering a mutation pursuant to that agreement, but he unfortunately died in a road side accident, with the original sheet sanctioning the mutation being with him and not 'deposited'.

It was further contended that, thereafter, the parties being on good term of each other, again entered into an agreement dated 22.01.2001, pledging therein that they would not go "behind the previous agreement" (dated 22.01.2000).

The learned trial Court vide the impugned order, while referring to the contents of the written statement, has stated that as per the application for amendment, subsequently, in the year 2012, the defendants came to know that mutation had actually been sanctioned when they obtained a copy of the '*Jamabandi*', with the original not deposited by the Revenue Officer in his office,

but with an entry made in the '*Parat Patwar*' (the mutations register with the Patwari), being there.

An appeal against the sanction of the mutation, vide an order dated 12.11.2012, was also challenged by the plaintiff (petitioner herein), against the order of the District Collector, but with that challenge having been repelled with a dismissal.

[At this stage, learned counsel for the petitioner submits that that dismissal was actually not on merits but 'qualified' by a direction given by the appellate revenue authority, that the plaintiff should approach the Civil Court for redressal of his grievance].

Further discussing the reply of the plaintiffs, to the application seeking amendment of the written statement, it has been stated by the trial Court as follows:-

“It is worth to mention here that the alleged mutation bearing no. 15 which is the photocopy of 'Partpatwar' on which the alleged date of agreement of exchange has been mentioned as 22.01.2000 to have been sanctioned on 05.01.2001. With the death of the officer the document do not vanish and they are supposed to be deposited with the record as it is the 'Patwari' who enter the mutation which is then verified and attested by the 'Halwa Kanungu' and then it is sanctioned by an order of the Assistant Collector. In the present case the defendants have failed to establish as to who the alleged agreement dated 22.01.2000 remained only with the Assistant Collector. This clearly shows and prove that the alleged agreement of exchange dated 22.01.2000 never in existence and the same is made creation of the mind of the defendants and the date of exchange as 22.01.2000 has been mentioned in the 'Partpatwar' just to save the defendants from criminal liability as the other alleged agreement of exchange dated 22.01.2001 is forged and fictitious document which does not bare the signatures/Thumb impression of

the parties and witnesses. The application is liable to be dismissed with costs.”

Thus, though it would appear that the words “it is worth to mention here” would seem to be an observation of the Court itself, it is actually simply noticing the contentions of the plaintiffs in their reply to the application under Order VI Rule 17 CPC.

Eventually, the trial Court simply held that the amendment sought would not change the nature of the suit and only explains the facts already mentioned in the written statement.

On that reasoning, the application of the respondents-defendants was allowed and the amended written statement taken on record.

Before this Court, learned counsel for the petitioner submits that the defendants having initially denied the existence of the agreement dated 22.01.2001, subsequently, at a stage when the plaintiffs had also led their evidence, could not be allowed to take a complete *volte face* to submit in the amendment written statement that in fact there was an agreement of exchange dated 22.01.2001.

He submits that in fact the original written statement also had been filed on 02.05.2013, hence, it could not be said that the defendants did not have knowledge that an agreement dated 22.01.2001 was in existence and therefore they correctly had stated in the original written statement that there was no such agreement existent.

He relies upon a judgment of a co-ordinate Bench of this Court in **Jeetinder Singh vs. Inderjit Singh Batra and others** 2012 (24) RCR (Civil) 176, to submit that such a complete 'somersault' cannot be allowed at this stage.

Learned counsel for the respondents, on the other hand, submits that

once the nature of the suit is not being changed by the amended written statement, the amendment can be allowed at any stage.

In support of his argument, he relies upon a judgment of a co-ordinate Bench of this Court in Bharat Kaushik vs. Ashok Kumar Gulati and others (2009) 2 Law Herald 930 and 03 judgments of the Supreme Court, in Pankaja and another vs. Yellappa (D) By LRs and others (2004) 6 SCC 415, Regu Thilak D. John vs. S.Rayappan and others 2001 AIR SC 699 and Abdul Rehman and another vs. Mohd. Ruldu and others (2012) 4 RCR (Civil) 481.

Having considered the arguments of learned counsel on both sides, in my opinion this petition deserves to be allowed, in view of the fact that, firstly, the amendment under Order VI Rule 17 has been allowed wholly contrary to what is stipulated in the proviso to the said provision.

Order VI Rule 17 is reproduced hereinunder:-

***“Amendment of pleadings-** The Court may at any stage of the proceedings allow either party to enter or amend his pleading in such manner and on such terms as may just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

First, however, as regards the contention of learned counsel for the respondents that the amendment should be allowed as it does not change the nature of the suit, undoubtedly, the nature of the prayer made by the plaintiffs would not get changed by the amendment sought by the respondents-defendants in their written statement, but the nature of the suit as regards the stand of the respondents gets completely changed, and that too at a stage after the plaintiffs have already led

their evidence.

Consequently, a complete *volte face* having been taken by the respondents-defendants in their written statement, well after the trial had started, I do not see how the amendment was allowed by the trial Court, with it further to be seen with the fact that the original written statement was filed in May 2013, with the entry allegedly made in the revenue record in 2012, with regard to an agreement of the year January 2001. Thus, it is difficult to believe that the respondents-defendants, at that stage, did not have knowledge of such an agreement, or the mutation entry with regard thereto (made more than 10 years later).

Hence, the application for such an amendment in the written statement, coming at a stage when the plaintiffs had led their evidence, cannot be allowed in my opinion.

Consequently, this petition is allowed, with the impugned order set aside and the amended written statement ordered to be struck off from the record of the suit.

October 26, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes