

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

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**RSA-3999-2018 (O&M)
Date of Decision : 27.7.2018**

Bindu Sharma

....Appellant

vs.

Shimla Devi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.S.Siao, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit filed by the respondents.

Brief facts of the case are that Om Parkash had taken out an insurance policy bearing No.161389676. In that he had named one son Naresh Kumar as his nominee. He died on 24.8.2006. After his death Naresh Kumar reinvested the amount in another policy bearing No.300612198. Unfortunately, Naresh Kumar also died within a few months on 14.11.2006. Thereafter, the respondents who were the widow of Naresh Kumar and other son of Om Parkash filed the instant suit against the appellant (who is the widow of the aforesaid Om Parkash) claiming that the maturity value of the policy of Om Parkash had to be divided in three shares (because he had left behind three Class-I heirs). In the body of the plaint they had given the details of all the policies which had been taken out by Om Parkash and Naresh Kumar but in the head note and the prayer clause reference was made only to the original policy.

The case of the appellant on the other hand was that actually even the original policy had been financed by Naresh Kumar but he had taken it in the name of his father and that is why the father had nominated him. It was further pleaded that in fact Om Parkash was not having cordial relation with the respondents and he was residing with Naresh Kumar. In the year 2015, the respondents moved an application for amendment in which they wanted to incorporate the details of the subsequent policies (which were mentioned in the body of the plaint) in the head note and prayer clause also. That application was allowed by this Court in a revision petition. Thereafter, the Courts below held that the appellant had not been able to prove that the original policy was financed by Naresh Kumar, since in her cross examination she had admitted that Naresh Kumar was a student and was not earning anything. The Courts below further held that merely because Naresh Kumar had been named as a nominee would not give rise to the conclusion that it was like a testamentary disposition and as nominee Naresh Kumar could have taken money as a representative of the legal estate of the deceased Om Parkash and would be entitled actually only to 1/3rd share of the benefits. The appellant had also argued that when the amendment was sought in the year 2015 the claim regarding the subsequent policies was time barred. The Courts below held that in the circumstances of the case where all the details were mentioned in the plaint but only omission was there in the head note and in the prayer clause the amendment would relate back to the date of filing of plaint and would not therefore be barred by limitation.

Learned counsel has referred to various decisions where the

amendment has been held to be applicable from the date of application and not permitted to relate back but the facts of all those cases are different. One was a case where an injunction suit was originally filed which was subsequently converted into a suit for specific performance. There it was rightly held that the amendment would not relate back to the date of filing of suit but to the date when the application was made. Another citation relied upon by counsel for the appellant was in a case where first recovery of a certain amount was sought and thereafter it was amended to a larger amount. There also it was rightly held that amendment would not relate back to the date of suit but would be applicable from the date of the application. The present is not one of those cases. The present case is a case where the allegations are there in the plaint but only in the head note and the prayer clause reference was not made.

Resultantly, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

27.7.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No