

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

**SAO No.28 of 2018 (O&M)
Decided on : 16.03.2018**

Jasbir Singh and another

... Appellants

Versus

Charanjit Kaur

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

Mr. Kulbhushan Raheja, Advocate
for the caveator/respondent.

G.S. Sandhawalia, J. (Oral)

The present appeal by the defendants is directed against the order dated 18.01.2018, whereby the Lower Appellate Court, Sangrur allowed two applications under Order 6 Rule 17 CPC of the plaintiff for amendment of the plaint during the pendency of the civil appeal and allowed the appellants-defendants to file supplementary written statement. The judgment and decree dated 20.09.2012 passed by the trial Court was also set aside, while directing the parties to appear before the trial Court, vide the impugned order.

The reasoning of the Court was that the issue between the parties was whether the property was ancestral in nature and in the absence of any issue having been framed regarding the same, the question regarding the nature of the property was extremely important. On the basis of the pleadings of the parties, the suit could not be decided without giving any finding on this aspect. Resultantly, it was held that to do complete justice

inter se the parties, the amendment was necessary and it could not change the nature of the suit as such and the applications were allowed.

Counsel for the appellants-defendants has vehemently submitted that the order was not justified as the amendment at that stage was not permissible and that the parties were well aware of the nature of the land and, therefore, the Lower Appellate Court erred in allowing the application. In alternative, it was submitted that the report could have been called on the basis of the additional issues and the findings recorded as such on other issues which were as many as 14 in number were not liable to be set aside, vide the impugned order.

Counsel for the respondent on the other hand has submitted that the pleadings were already on record qua the nature of the property and, therefore, the Lower Appellate Court was well justified in allowing the applications. It is further pointed out that an application under Order 41 Rule 25 CPC had also been moved on 12.12.2017 (Annexure P-9) which was disposed on the same date as infructuous, in view of the relief granted in the application under Order 6 Rule 17 CPC. It is further pointed out that by allowing the amendment, the parties would be able to lead evidence on the specific question whether the property was ancestral in nature and it would settle the dispute for all times to come and it was necessary for the purposes of determining the real question in controversy between the parties.

It is to be noticed that the litigation is qua the inheritance of Amar Singh, father of the respondent, who had executed a Will dated

30.06.1997, which was registered on 10.07.1997 in favour of the appellants/defendants who are the nephews of the deceased. The suit also challenged two sale deeds dated 22.06.2004 and 11.10.2006 in favour of the nephews which were for 45K, 40K-11M, respectively of the land situated in village Sandahur. The inheritance as such was regarding the ownership of the property 65K-11M out of 173K-16M. The specific plea as such in the initial plaint was that the property was inherited from the grandfather Arjan Singh and, thereafter by Amar Singh who had purchased other property from the income of the ancestral property measuring 67K-8M.

The pleaded case was that the grandson Manjit Singh as such had served Amar Singh and had also done education from the Guru Nanak Engineering College, Ludhiana before he had shifted to USA in the year 1989. He had been treated as a son by his grandfather Amar Singh who had all love and affection with him. It is not disputed that Amar Singh had died on 12.01.1007 at the age of 96 years. The suit was, thereafter, filed on 16.04.2007 for declaration; possession and permanent injunction within 3 months from the date of the death of the father. It is not disputed that the plaintiff is a resident of USA and, therefore, the dispute is qua property of the father and the contest is with the nephews who are sons of Mohinder Singh, who was the brother of deceased Amar Singh.

Specific averments were made that the sale deeds were got executed and registered by the defendants by playing fraud and

misrepresentation, which were sham documents and Amar Singh was suffering from T.B and Paralysis and not having full senses. The sale deeds were without any consideration and nothing had been paid in the presence of the Sub-Registrar, though ₹28,82,000/- and ₹12,55,000/- had been shown as sale consideration. Specific averments had further been made that there was no legal necessity to sell the property.

The lineage as such was not disputed in the written statement, but it was denied that the property was ancestral and that it was self acquired property.

At an initial stage, the trial Court had not framed the issues also regarding the nature of the property, which would be clear from the initial issues, which were 7 in number and read as under:-

- “1. Whether the sale deeds no.480 dated 04.06.2004 and no.1200 dated 11.10.2006 are the result of mis-representation and fraud?
OPP*
- 2. Whether plaintiff is co-sharer in the disputed property, if so, to what extent? OPP*
- 3. Whether defendants are threatening to alienate, transfer and mortgage the disputed property illegally and forcibly? OPP*
- 4. Whether the suit is maintainable? OPP*
- 5. Whether the plaintiff is estopped by her act and conduct from filing the present suit? OPP*
- 6. Whether the suit is maintainable? OPP*
- 7. Relief.”*

It is, thereafter, on filing of the application that the number of issues were varied to the extent that whether the plaintiff has no cause

of action to file the suit, whether the plaintiff is estopped by her own act and conduct to file the suit and whether it was filed just to harass the defendants and whether it was time barred etc. Even at that stage the basic issue as such regarding the right of the parties as such qua the right of alienation of ancestral property was never framed, which would be the root of the matter.

The right of the Amar Singh to alienate ancestral property and whether there was any legal necessity to execute the sale deeds, which are subject matter of challenge are the core question which would arise for determination before the Court. In the absence of any issue not having been framed, this Court is of the opinion that reasoning which has been adopted by the Lower Appellate Court is well justified.

It is settled principle that the amendment is to be allowed, as the determination of the real question in controversy is to be done and to minimise litigation. It is not disputed that while deciding the suit on 20.09.2012, the Civil Judge (Senior Division), Maler Kotla had upheld the sale deeds in favour of the appellant-defendants, but while deciding issue No.2 had also held that the Will was null and void. The appellant-defendants not being satisfied also filed a cross-objection regarding the finding on issues No.2 and 8 to 13 regarding the validity of the Will and estoppel.

It is, thus, apparent that the appellants were dissatisfied with the finding that the Will had been disbelieved. The issue would also arise for consideration whether Amar Singh was competent to bequeath his

property by virtue of the Will. Once the amendment had come into force in the Hindu Succession Act, 1956 giving the right to the plaintiff as a co-parcener and whether the father could bequeath his property beyond his share were material issues and it could only be decided by going to the root of the matter by the trial Court, if the basic issue had been framed. Though the issues have been re-framed as noticed above, but it has again escaped the notice of the trial Court as to what is the actual dispute *inter se* the parties and the rights of alienation either by sale deed or by bequeathing by way of registered Will.

It is in such circumstances, this Court is of the opinion that the judgment in '**M/s Divya Exports Vs. M/s Shalimar Video Company and others'** 2014 (16) SCC 194 would be directly applicable as by virtue of the amendment, the family tree has also been brought on record and necessary evidence would also have to be brought on record by producing the "Excerpt" from the revenue record as how the property came down the generations. The relevant part of the said judgment reads as under:-

"16. Since the trial Court had not framed specific issue touching the validity of agreement Exhibit B.1, the parties did not get effective opportunity to lead evidence in support of their respective cases. In the absence of any issue, the trial Court did not even advert to the question whether or not agreement Exhibit B.1 was valid. The evidence available on the record was not at all sufficient for deciding that question and yet the learned Single Judge decided that question by drawing inferences from the statements made by the witnesses examined by the parties with reference to the issues framed by the trial Court and returned a negative finding on the

validity of Exhibit B.1.

17. In our view, in the peculiar facts of this case, the learned Single Judge was not at all justified in invoking Order 41 Rule 24 CPC. If at all the learned Single Judge felt that the trial Court should have framed specific issue on the validity of agreement Exhibit B.1, then he should have remanded the matter to the trial Court with a direction to frame such an issue and decide the suit afresh. The omission on the part of the learned Single Judge to adopt that course has resulted in manifest injustice to the appellant.

18. In the result, the appeal is allowed. The impugned judgment is set aside and the case is remitted to the trial Court with the direction that it shall, after considering the pleadings of the parties, frame an additional issue on the validity of agreement Exhibit B.1 executed between respondent No. 1 and respondent No. 3, give opportunity to the parties to produce evidence and decide the suit afresh without being influenced by any of the observations made by the High Court and this Court.”

In the absence of proper issues not being framed, the parties would be gravely prejudiced and Court would be at loss to decide the matter in its proper prospective. The judgment of the Apex Court in **'Prithi Pal Singh and another Vs. Amrik Singh and others' 2013 (9) SCC 576**, wherein the amendment was allowed at the appellate stage and the principles were laid down have to be kept into consideration. The same read as as under:-

“11. From the ratio of the aforesaid judgments, following points emerge:

(a) Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;

(b) The dominant purpose of the amendment is to minimize the litigation;

(c) The amendment once allowed and incorporated relates back to

the date of the initial institution of the suit;

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.”

Similarly, in '**Abdul Rehman and another Vs. Mohd. Ruldu and others**' 2012 (11) SCC 341, the Apex Court widened the scope and power of amendment and held that it can be exercised at any stage and has to be exercised, keeping in view the nature of the relief claimed and dispute *inter se* the parties. The relevant part reads as under:-

“14. In Pankaja & Anr. v. Yellapa (Dead) By Lrs. & Ors. 2004(3) R.C.R.(Civil) 723 : (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

Resultantly, keeping in view the cumulative discussion, this Court is of the opinion that the order impugned as such does not suffer from any infirmity. The appellants have been given liberty to file their reply and have been given adequate opportunity to contest the amendment of pleadings, which has been allowed vide the impugned

order.

Accordingly, there is no merit in the present appeal and the same is dismissed.

MARCH 16, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>