

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

**Civil Revision No.1882 of 2016 (O&M)
Date of Decision:03.12.2019**

Shanti Devi and others

.....Petitioners

Vs

Partap and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Shailendra Jain, Sr. Advocate with
Mr. Sidharath Goyal, Advocate
for respondents No.1, 5 and 6.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of the order dated 02.03.2016 passed by the Civil Judge (Junior Division) Hisar, vide which the application filed by the them for striking off parts of written statement to the amended plaint was dismissed.

[2]. Brief facts relevant to be noticed are that vide order dated 24.12.2015, passed in CR No.3538 of 2014 titled '*Smt. Shanti Devi and others vs. Partap and others*' this Court allowed the application under Order 6 Rule 17 CPC, thereby allowing the plaintiffs to amend the plaint by setting aside the order dated

14.05.2014 passed by the Civil Judge (Junior Division) Hisar.

[3]. In pursuance of the aforesaid order passed by this Court, the plaintiffs filed the amended plaint. In the headnote of the suit, following insertions have been incorporated:-

“..... and alternatively in case the defendants are found in possession of the land in suit, a decree for possession be also passed in favour of the plaintiff and proforma defendants.....”

[4]. Para No.8A was added to the following effect:-

“8A. That alternatively in case the defendants are found in possession of the land in suit, a decree for possession be also passed in favour of the plaintiff and proforma defendants.”

[5]. In the prayer clause, following insertions have been incorporated:-

“.....and alternatively in case the defendants are found in possession of the land in suit, a decree for possession be also passed in favour of the plaintiff and proforma defendants.....”

[6]. The aforesaid amendments were in the context of alternative relief that in case the defendants are found to be in possession of the suit property, then a decree for possession be granted in favour of the plaintiffs and proforma defendants. The said amendments are on the basis of title of the suit property in favour of the plaintiffs.

[7]. In response to the aforesaid plaint, the

defendants/respondents filed the written statement, wherein preliminary objection No.1 is to the following effect:-

"1. That the suit is not maintainable in the present form. The suit has been filed by the plaintiffs seeking injunction on the basis of their alleged possession and after appearance when the defendants pleaded that they are in settled possession of the suit land since 1977 and the plaintiffs never remained in possession of suit property even for a single day, the plaintiffs on seeing that their suit is going to fail, cleverly, filed an application for amendment of the plaint claiming relief of possession in alternative. In this regard, it is submitted that the averments made in the plaint itself are contradictory. On one hand the plaintiffs are seeking relief of injunction by claiming themselves into possession and on other hand they are seeking decree of possession in alternative. This contradictory plea of the plaintiffs, demolish their case and make them disentitled to get any relief in this case. Further, the defendants purchased the suit property in the year 1977 by way of registered sale deed, obtained possession from their vendors and since then the defendants are in possession of suit property. The possession of the defendants over the suit property is peaceful, open and continuous. The plaintiffs are within knowledge of possession of defendants since the day when they (defendants) came in possession. In fact, the plaintiffs have relinquished their rights qua the suit land in favour of defendants and that is why they (plaintiffs) did not take any action to oust the defendants from suit land since about 35 years nor ever objected the possession of the defendants especially when their possession is open and undisturbed and within knowledge of the plaintiffs since about 40 years, hence, the defendants have perfected their title by adverse possession. Except having papers of allotment of suit land, the plaintiffs have nothing with them to oust the defendants from suit land when the plaintiffs have lost their right due to their inaction i.e. in not taking any action to oust the defendants within

statutory period. Therefore, seeing from any angle, the suit of the plaintiffs is liable to be dismissed with costs.”

[8]. The grievance of the petitioners is that in the original written statement, no such stand was taken as shown in preliminary objection No.1 of the written statement filed to the amended plaint and the written statement now filed do not correspond to the amended recitals made in the plaint and the defendants have restructured total written statement.

[9]. By referring to the case laws, viz. **Shri Charanjit Lal vs. Shri Ramesh Kumar, 2012(2) PLR 2012; Gurdial Singh vs. Raj Kumar Aneja, 2002(1) R.C.R (Rent) 194; Improvement Trust Patiala through its Administrator/Chairman vs. Jaswinder Kaur, 2010(45) R.C.R. (Civil) 893** and **Raees Ahmed vs. Shrigopal Prakash and others, 2003(1) CivCC 666 (Rajasthan)**, learned counsel for the petitioners submitted that the change in the written statement to the amended plaint should confine only to the new pleas added in the amended plaint. No new plea can be allowed to be raised by the defendants as the same would fall on different footing for which amendment in the written statement has to be asked for.

[10]. Learned counsel further submitted that the defendants cannot be permitted to raise additional pleas as the same would amount to permitting them to amend the written statement.

There is a difference between the written statement filed to the plaint and amended written statement filed pursuant to the order granting such permission.

[11]. On the other hand, learned Senior counsel for respondents No.1, 5 and 6, by referring to the para Nos.6 and 8 of the original written statement, submitted that the pleadings of the original plaint were denied. For ready reference para nos.6 and 8 of the original written statement are reproduced hereasunder:-

“6. That this para of the plaint as such is wrong and specifically denied. It is specifically denied that the plaintiffs ever became the sole and exclusive owner in possession of the suit land or that they are still in possession of the suit land. The averments of this para of the plaint are totally false and baseless. The suit land is under cultivating possession of the answering defendants since long and this fact is well within the knowledge of the plaintiffs. The possession of the answering defendants can be ascertained from the spot itself.

8. That this para of the plaint as such is wrong and specifically denied. It is specifically denied that the plaintiffs and proforma defendants ever became the sole and exclusive owner in possession of the suit land or that they are still in possession of the suit land. The averments of this para of the plaint are totally false and baseless. The suit land is under cultivating possession of the answering defendants since long and this fact is well within the knowledge of the plaintiffs. The possession of the answering defendants can be ascertained from the spot itself.”

[12]. Learned Senior counsel further submitted that in view of the stand taken by the defendants, they have denied ownership and possession of the plaintiffs over the suit property, rather they claimed themselves to be in cultivating possession. Defendants further pleaded that plaintiffs and proforma defendants never became owner in possession of the suit property, nor they are in possession of the same.

[13]. Learned Senior counsel also submitted that while granting permission to amend the plaint by this Court vide order dated 24.12.2015, defendants were never restricted to deny the title of the plaintiffs and assert their title. Since the amended recital in the plaint revolves around the plea of title raised by the plaintiffs, therefore, defendants have right to rebut the same in the written statement.

[14]. Learned Senior counsel by relying upon **Mahant Kapil Dev vs. Smt. Parkash Wati and others, 2013(6) R.C.R. (Civil) 672; Girdharilal vs. Krishan Datt, 1960 AIR (Punjab) 575; Jagan Nath vs. The Sangrur Central Co-operative Bank Ltd., 1980(1) R.C.R. (Rent) 600** and **Naresh Kumar vs. Om Parkash, 1990(1) R.C.R. (Rent) 8** contended that reading of para Nos.11, 14, 15 and 16 of the aforecited case of **Mahant Kapil Dev** (supra) would highlight that the ratio of Gurdial Singh

(supra) is an *obiter* in some different context and does not apply to the proposition in question. The issue as to whether new plea in written statement to the amended plaint can be taken or not was not in issue in the said case. Some observations made in this regard in Gurdial Singh's case (supra) were opined to be *obiter dicta*. For ready reference, para Nos.11, 14, 15 and 16 of the aforecited judgment are reproduced hereunder:-

“11. In the first instance, it has been rightly pointed out by learned senior counsel for the petitioner that the alleged offending portions of written statement to the amended plaint are infact in response to amended plea taken by the plaintiffs in their plaint by way of paragraph 14-A of the plaint. There is considerable merit in this submission. In paragraph 14-A of the amended plaint, it has inter alia been alleged that defendant No. 3 has no right, title or interest in the suit property and possession of defendant No. 3 if proved is illegal possession. To rebut this plea of the plaintiffs taken by amendment of plaint, defendant No. 3 has raised preliminary objections No. 9 to 11 and other offending portions in paragraph 1 and 14-A on merits of the written statement to the amended plaint to depict as to how he has title over the suit property. Consequently, the contention of learned senior counsel for respondents No. 1 and 2 that new plea, which does not pertain to amended part of the plaint, cannot be raised in the written statement, is not applicable to the instant case because the alleged offending portions of the written statement to the amended plaint are germane to the amended part of the plaint.”

14. Besides it, in view of judgment of Division Bench of this Court in case of Girdhari Lal (supra) also, defendant No. 3 has right to raise even new plea in written statement to amended

plaint, even if the new plea does not pertain to amended part of the plaint.

15. *Judgment in the case of Gurdial Singh (supra) cited by learned senior counsel for respondents No. 1 and 2 cannot be invoked because the issue as to whether new plea in written statement to amended plaint can be taken or not was not in issue in the said case. It was, therefore, not argued or canvassed in that case. Some observations in this regard have been made in the said judgment, but the same are obiter dicta. In that case, amendment of pleading made by occupants of demised property had been allowed by this Court. Pursuant to the amended pleading, trial of the case had ended and the appellants/occupants had failed on merits. Consequently, the Hon'ble Supreme Court left the matter at that only. Hon'ble Supreme Court observed that amended part of the pleading should be specifically stated in application for amendment. However, said observations are also not relevant for the decision of instant revision petition which involves a completely different issue. At the risk of repetition, it may be highlighted that the controversial portion of the written statement to amended plaint is only consequential amendment and has been pleaded to controvert the amended part of the plaint and to assert title of defendant No. 3 which is denied in the amended part of the plaint.*

16. *Reference to Order 6 Rule 7 and Order 8 Rule 9 CPC is also of no help to respondents No. 1 and 2, for the reasons stated hereinbefore because defendant No. 3 is taking the new pleas only in response to amended part of the plaint and also because defendant No. 3 has right to take even new pleas not pertaining to amended part of the plaint, in view of observation made by Division Bench of this Court in the case of Girdhari Lal (supra)."*

[15]. Learned Senior counsel further submitted that **Mahant**

Kapil Dev's case (supra) was decided by the High Court on 15.05.2012 i.e. subsequent to the decision rendered in **Shri Charanjit Lal's** case (supra), therefore, consideration made in para No.15 of the judgment passed in the case of **Mahant Kapil Dev** (supra) would have precedence being latest pronouncement. Moreover, while taking the aforesaid view, the High Court has considered the ratio of Division Bench judgment in **Girdhari Lal's** case (supra), wherein it has been held that there is no rule of law statutory or otherwise which restricts or limits the defendant, when he is called upon to file written statement to an amended plaint to contest the plaintiff's claim, to any particular plea. The general scheme of the Code of Civil Procedure and the policy underlining the law of pleadings does not suggest any such restriction. The pleas taken in the written statement to an amended plaint are not exclusively controlled or governed by the provisions of Order 6 Rule 17 CPC. It is the right of the defendant to contest the suit as made out in the amended plaint as a whole.

[16]. The law of pleadings should not be construed and applied with undue rigidity and strictness, if no prejudice or embarrassment towards fair trial of the suit is caused. The only consideration is whether or not the plea is an afterthought and lacks merit, but in any case right of the defendant to raise the

new pleas could hardly be negated by reference to the provision of Order 6 Rule 17 CPC only. On reasonable ground the defendant can be prohibited or debarred from raising the new plea in answer to the new relief claimed by the plaintiff. In the absence of any formal authorization for amendment of the written statement, such type of insertion would be a mere irregularity not affecting the merits of the case. The sole object of the pleadings is to see whether the parties differ, and that each side may be fully alive to the questions that are about to be argued, so that they may adduce all appropriate evidences, and if this object has been achieved, then to rule out the amended pleadings would tend to defeat, instead of promoting, the cause of justice, for serving which alone the rules of procedure exist. The views expressed by the Division Bench of this Court in **Girdhari Lal's** case (supra) has been consistently followed in subsequent decisions of this Court i.e. **Jagan Nath's** case (supra).

[17]. The view expressed in **Girdhari Lal's** case (supra) was again followed in **Naresh Kumar's** case (supra) and it was held that no restrictions have been imposed in the order permitting the amendment with respect to filing of the written statement. The defendants would be at liberty to contest the suit as framed after the amendment.

[18]. Evidently, the respondents were never restricted in the earlier decision rendered by this Court while allowing the amendment of the plaint. Once the defendants were allowed to file written statement without imposing any restriction, there is no rule which contradicts the plea taken by them in the earlier written statement.

[19]. Over all consideration of the case particularly in view of the fact that plea of possession is sought to be inserted by the plaintiffs on the basis of title to the suit property, therefore, it would be in the fitness of things to allow the defendants to contest the suit on all permissible notes including raising of plea of title based on sale deed on the plea of adverse possession.

[20]. The trial Court has rightly concluded that initially suit was for injunction and the defendants from the very beginning have been denying the possession of the plaintiff over the suit property. With the amended plaint, the plaintiffs have prayed for decree for possession on the basis of title, therefore, it would be open to the defendants to raise a defence of adverse possession and the same would not fall on different footing because possession of the plaintiffs was denied altogether by the defendants, even in the original written statement. Defendants were pressing that the plaintiffs were never in possession of the suit property. The possession of the

defendants would be ingrained into the adverse possession.

[21]. In my considered opinion, the plea of sale deed to counter the plea of title in favour of the plaintiffs in the amended plaint coupled with plea of adverse possession would not be construed to be a new plea foreign to the amended plaint in any manner. It is relevant to observe here that the case had already reached the stage of rebuttal and arguments, when the amendment in the plaint was allowed and the proceedings have come up for consideration before this Court.

[22]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned order passed by the trial Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

December 03, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No