

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3568-2017 (O&M)
Date of Decision:-20.11.2019.

Lakhwinder Singh

.....Petitioner

Versus

Kulwant Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Argued by: Mr. Gagandeep Singh Sirphiki, Advocate for the petitioner.

Mr. R.D. Bawa, Advocate and
Mr. Samuel Gill, Advocate for respondent No.1.

SANJAY KUMAR, J.

The petitioner is the third plaintiff in the suit bearing Case No.184 of 2013 on the file of the learned Civil Judge (Junior Division), Batala (hereinafter, 'the trial Court'). He filed this revision under Article 227 of the Constitution aggrieved by the order dated 20.04.2017 passed by the trial Court allowing amendment of the written statement of the first defendant under Order 6 Rule 17 CPC.

By order dated 17.05.2017 passed in this revision, this Court stayed further proceedings before the trial Court.

Parties shall hereinafter be referred to as arrayed in the suit.

Case No.184 of 2013 was filed by the plaintiffs for a declaration to the effect that they were the owners in possession to the extent of half share of the suit property while the second and third

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defendants were the owners in possession to the extent of the other half share. The suit property was an extent of land admeasuring 29 Kanals 2 Marlas, bearing Khasra No.19R/7/2, 19R/13, 19R/14/1 and 19R/17/1, situated at Village Manjianwali, Tehsil Batala, District Gurdaspur, State of Punjab. They sought a further declaration that the mutation sanctioned on the basis of the sale deeds allegedly executed by Gopal Singh, the predecessor-in-interest of the plaintiffs, in favour of the first defendant was illegal, *ultra vires*, null and void, owing to the collusion and conspiracy between the first defendant and the revenue officials, who were not competent to sanction such mutation on the basis of the said sale deeds, as Suit No.133 dated 26.09.2001 filed by the first defendant against the plaintiffs and others before the learned Additional Civil (Senior Division), Batala, had already been dismissed, vide judgment and decree dated 26.04.2006. They also ought consequential relief in the form of proprietary possession over the suit property in favour of themselves and the second and third defendants and against the first defendant.

It is an admitted fact that by the time the subject amendment application was filed in April, 2016, the plaintiffs had already adduced their evidence and witnesses for the first defendant were examined in part. That being so, the situation obtaining as on the date of presentation of the amendment application was governed by the *proviso* to Order 6 Rule 17 CPC. As per the said *proviso*, after commencement of the trial, the Court ought not to allow amendment of the pleadings unless the party seeking to do so satisfied the Court that, in spite of due diligence, it could not have raised the matter before commencement of the trial. It was therefore incumbent upon the first defendant to demonstrate before the trial Court

that, despite exercise of due diligence, he could not have sought the amendment, as prayed for by him, before commencement of the trial. However, perusal of the amendment application reflects that no attempt whatsoever was made to discharge the burden of showing that the first defendant had exercised due diligence, as required by the *proviso*. It is also relevant to note that in their objections to the amendment application, the plaintiffs specifically raised this issue and cited case law in support of their contention that such amendment should not be allowed in the usual course after commencement of the trial.

The order under revision however reflects that the trial Court did not even deal with their objection in this regard though the same was set out in para 3 of the order. The trial Court baldly summed up that even after commencement of the trial, when it is shown that an amendment is necessary for the purpose of determining the real controversy and such an amendment did not cause any prejudice to the other party or delay the trial of the suit, the power to allow such an amendment should be liberally exercised. The trial Court further observed that, as it was the case of the first defendant that the proposed amendment was not within his knowledge and he came to know of the same only subsequently, administration of justice required that both parties should be given due opportunity to present their case more effectively so as to enable the Court to adjudicate upon the main controversy between them. It is on the strength of this reasoning that the trial Court allowed the application.

Mr. Gagandeep Singh Sirphikhi, learned counsel, would contend that this approach on the part of the trial Court was opposed to the settled legal position obtaining after 2002, when the *proviso* to Order

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6 Rule 17 CPC was inserted in the statute book. He would place reliance on case law to support his contention that the trial Court erred grievously in permitting amendment of the first defendant's written statement after commencement of the trial.

Per contra, Mr. R.D. Bawa, learned counsel, would contend that the trial Court was fully justified in allowing the amendment application, as the facts sought to be introduced by way of such amendment were not within the knowledge of the first defendant and the same had an impact on the issue in controversy.

Be it noted that by way of the amendment application, the first defendant wanted to add a para in his written statement to the effect that his vendor, Gopal Singh, had executed two other sale deeds in relation to his remaining land admeasuring 29 Kanals 2 Marlas in favour of the plaintiffs, after selling the suit property to him, and therefore, the question of the plaintiffs having acquired any rights from the said Gopal Singh by inheritance did not arise at all. According to him, he came to know of these sale deeds only when he approached Gurnam Singh, the attesting witness of the sale deeds dated 15.2.1988 executed by Gopal Singh in his favour. He claimed that upon acquiring knowledge of this fact, he procured certified copies of the sale deeds dated 23.02.1988 from the office of the Sub-Registrar concerned.

Significantly, the first defendant had earlier filed Civil Suit No.133 of 26.09.2001 against plaintiffs 1 to 4 in the present suit and the father of the fifth plaintiff, Tarsem Singh, and others before the learned Additional Civil Judge (Senior Division), Batala, for a declaration that he was the owner in possession of the land admeasuring 29 Kanals 2 Marlas,

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bearing Khasra No.19R/7/2 (3-16), 10/3 (0-19), 11/1 (7-16), 13 (7-7), 13 (3-11) Min Lehanda, 17/1 (5-13), Khewat No.52, 53, Khatauni No.161, 169, situated at Village Manjianwali, and for a permanent injunction restraining the defendants therein from interfering with or dispossessing him from the said property. This suit was filed by the first defendant in relation to the suit property in the present suit based on the very same sale deeds dated 15.2.1988 executed in his favour by Gopal Singh, wherein Gurnam Singh was the attesting witness. The said suit however came to be dismissed by the learned Additional Civil Judge (Senior Division), Batala, *vide* judgment and decree dated 26.04.2006, under Order 17 Rule 3 CPC. Perusal of the said judgment demonstrates that the learned Judge recorded a finding therein to the effect that the first defendant, being the plaintiff in the said suit, miserably failed to prove his possession on the basis of the sale deeds dated 15.02.1988 and that the suit was not within limitation. He was therefore held disentitled to the declaration and injunction prayed for by him.

This judgment assumes relevance in the context of the due diligence that was required to be exercised by the first defendant in terms of the *proviso* to Order 6 Rule 17 CPC while seeking amendment of his written statement in the present suit. It is clear therefrom that the first defendant filed the earlier suit on the strength of the sale deeds wherein Gurnam Singh was the attesting witness. Therefore, he would have had occasion to seek out the said attesting witnesses for the purpose of making out his case in his own suit but admittedly, he failed to adduce evidence before the Court and did not even appear in the witness box, leading to the judgment being passed against him under Order 17 Rule 3 CPC. Even in

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the present suit, the first defendant had filed his written statement as long back as in April, 2014. Specific reference was made by him therein to the sale deeds dated 15.02.1988 executed by Gopal Singh. As Gurnam Singh was none other than the attesting witness in his own sale deeds dated 15.02.1988, the first defendant had every opportunity, be it at the stage when he himself filed a suit or later, when he filed a written statement in the present suit in 2014, to enquire with the said attesting witness as to any relevant or material facts pertaining to such attestation that needed to be raised by him in the course of the litigation. Admittedly, the first defendant failed to take any steps in that regard and it is only now, long after commencement of the trial in the present suit, that he claims to have approached Gurnam Singh and wants to take advantage thereof by amending his written statement.

Reliance placed by Mr. R.D. Bawa, learned counsel, on ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons [2009 (Supp) AIR (SC) 2897]*** is of no avail as the Supreme Court did not consider the *proviso* to Order 6 Rule 17 CPC in the said case. The decision in that case merely turned upon amendment of written statements being allowed more liberally than amendment of pleadings. It may however be noted that the Supreme Court observed therein that an application under Order 6 Rule 17 CPC entails a serious judicial exercise and it should never be undertaken in a casual manner. Similarly, the observations of the Supreme Court in ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon. [AIR 1969 SC 1267]*** that the power to grant amendment of pleadings is intended to serve the needs of justice and the same should not be governed by narrow or technical

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limitations cannot be applied at this point of time after introduction of the *proviso* to Order 6 Rule 17 CPC in the year 2002. In a 'post commencement of trial' scenario, any party to a suit who seeks amendment of the pleadings necessarily has to pass the test in terms of the said *proviso*.

On the other hand, the observations of a learned Judge of this Court in ***Ashok Kumar Laroia Vs. Vijay Kumar and another [2011 (5) R.C.R. (Civil) 268]*** are more pertinent and are to the effect that the whole purpose of amending the provisions of Order 6 Rule 17 CPC by way of insertion of the *proviso* was to see that the Court does not allow amendment of pleadings after commencement of the trial unless the party seeking such amendment is in a position to satisfy the Court that in spite of due diligence, it could not have raised the matter before commencement of the trial and to curtail delays in the litigation. Reference may also be made to the observations of the Supreme Court in ***Vidyabai and others Vs. Padmalatha and another [2009(2) SCC 49 : 2009 AIR (SC) 1433]*** to the effect that the *proviso* to Order 6 Rule 17 CPC is couched in a mandatory form and the Court's jurisdiction to allow an amendment is taken away thereby unless the conditions precedent therefor are satisfied, viz., the Court must come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. On the same lines are the observations of the Supreme court in ***Chander Kanta Bansal Vs. Rajinder Singh Anand [2008 AIR (SC) 2234 : 2008 (5) 117]***, wherein it was observed that the new *proviso* lays down that no application for amendment should be allowed after commencement of the trial unless the Court comes to the

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conclusion that in spite of due diligence, the party could not have raised the matter before such commencement. It was further observed that the question as to whether the party had acted with due diligence or not would depend upon the facts and circumstances of the individual case. The Supreme Court opined that the *proviso* did not posit a complete bar or shut out entertaining of later applications but the reason for adding the *proviso* was to curtail delay and expedite hearing of cases.

Applying the aforesaid legal principles to the case on hand, this Court is of the opinion that had the first defendant exercised requisite care at the relevant time, be it in his own suit or at the time of filing of his written statement in the present suit, he would have known about the alleged factum of Gopal Singh, his vendor, having executed two other sale deeds. As the lapse in this regard is squarely attributable to the first defendant himself, it cannot be said that he exercised due diligence and could not have raised this issue prior to commencement of the trial.

The first defendant therefore failed to meet the legal requirements of the *proviso* to Order 6 Rule 17 CPC. The trial Court completely overlooked this aspect while allowing the amendment application. In consequence, the order under revision cannot be sustained and is therefore set aside. The civil revision is accordingly allowed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

November 20, 2019.

sandeep

Whether speaking/reasoned:-

Yes.

Whether Reportable:-

Yes.