

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

**CR No.939 of 2019(O&M)
Date of Decision: 07.02.2019**

Om Parkash

.....Petitioner

Versus

Subash Chander and others

.....Respondents

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

Present:Mr. Achin Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 07.01.2019 passed by Additional Civil Judge (Senior Division), Faridkot whereby the application filed by respondent No.1 for amendment of written statement was allowed.

[2]. Plaintiff filed a suit for separate possession by way of partition of half share out of plot measuring 8.6 marlas (205 sq. yards) which is part of khasra Nos.2383 (8-10) and 2388 (5-16) hereinafter called as suit land as detailed in the headnote of the plaint.

[3]. Defendant No.4/respondent No.1 filed an application under Order 6 Rule 17 CPC for amendment of written statement

so as to take preliminary objection No.8 in respect of suit being bad for partial partition.

[4]. Plaintiff/petitioner has contested the application on the ground that the chunk of land is 14 kanals 6 marlas in *abadi* and the same has been sold to different vendees with separate portions who had already constructed their houses. Defendants No.1 to 3 have sold the suit property to defendant No.4/respondent No.1 with specific boundaries. Plaintiff/petitioner pleaded that the entire holding in khasra Nos.2383 and 2388 cannot be treated to be joint as the same has already been partitioned long back. With the construction on the spot, the entire land has become impartible.

[5]. Since the plaintiff himself filed a suit for partition, therefore, it would be debatable as to whether such a plea can be taken by the plaintiff himself or not. Plaintiff seeks partition of the property which was earlier a residential house exclusively in possession of Sadhu Singh. Whether proposed plea of partial partition is available to defendant No.4/respondent No.1 or not would be a subject matter of consideration of the case on merits by the Court at the relevant stage. Plea of partial partition is a legal plea. No prejudice would be caused to the plaintiff as he would be having opportunity to lead evidence and also to cross-examine the witnesses of the defendants. Trial Court

appreciated the aforesaid propositions and allowed the amendment subject to payment of costs.

[6]. Learned counsel for the petitioner referred to **Vidyabai and others Vs. Padmalatha and another, 2009(1) RCR (Civil) 763** and **Ajmer Singh Vs. Girdhala and others, 2014(30) RCR (Civil) 113** and contended that in view of proviso to order 6 Rule 17 CPC, no such amendment can be allowed after commencement of trial. Defendant No.4 was in the knowledge of the aforesaid fact and the application was not filed after due diligence. The suit is at the fag end and therefore, the amendment ought not to have been allowed by the trial Court. Defendants No.1 to 3 have sold the property to defendant No.4 with specific portion out of the joint land.

[7]. I have considered the submissions made by learned counsel for the petitioner.

[8]. Amendment of written statement has to be liberally construed as the same is placed at some different pedestal than that of amendment of plaint. Defendant is entitled to take new defence and can plead inconsistent stand as well. The delay in filing the application for amendment of the written statement itself is not a ground for rejection of the same as no serious prejudice is going to be caused to the plaintiff, particularly in view of the fact that the plaintiff's evidence is in progress. At the

stage of amendment of pleadings, merits of the case are not to be seen. It is a settled principle of law that all *bona fide* and necessary amendments should be allowed. The amendment in the written statement would enable the Court to decide the controversy in an effective manner.

[9]. The elaboration of stand by way of proposed amendment at the instance of the defendant can be allowed in view of ratio laid down in **M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362. In Surender Kumar Sharma Vs. Makhan Singh, 2009(44) RCR (Civil) 597, Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others, 2007(2) RCR (Civil) 830, Baldev Singh and others Vs. Manohar Singh and another, 2006(3) RCR (Civil) 844 and Andhra Bank Vs. ABN Amro Bank N.V. and others, AIR 2007 SC 2511,** wherein it was held that all just amendments should be allowed which are necessary for complete justice in the case. Even amendment of pleadings at a belated stage can be allowed for which opposite party can be compensated with adequate costs. Belated amendment cannot be refused if the same is found to be necessary for real determination of the case.

[10]. Rule of amendment is essentially a rule of justice, equity and good conscience. Power can be exercised in larger

interest in doing complete justice between the parties. The first part of Rule 17 CPC gives discretion to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism. In **Usha Balashaheb Swami and others case (supra)**, the Hon'ble Apex Court held in the following manner in para Nos.20 and 23:-

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

23. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the

High Court was justified in rejecting the application for amendment of the written statement.”

[11]. The plea of elaboration of defence in support of earlier plea was endorsed in **M/s Estralla Rubber's case (supra)**. The plea of partial partition is based on the facts and circumstances of the case where the plaintiff himself has filed a suit for partition which signifies the property is joint of the parties. Separate possession of the plaintiff on specific shares would be decided by the Court at the relevant stage.

[12]. For the reasons recorded hereinabove, I do not find any error of jurisdiction in the impugned order dated 07.01.2019 passed by Additional Civil Judge (Senior Division), Faridkot. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

07.02.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**