

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7803 of 2015 (O&M)
Date of Decision:29.1.2020

Amarjit Kaur

---Petitioner

vs.

Darshan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gurcharan Dass, Advocate
for the petitioner
Mr. Satinder Khanna, Advocate
for respondents No. 1 and 2
Mr. Arjun Veer Sharma, Advocate
for respondent No. 4
Mr. Madan Sandhu, Advocate for
Mr. Suvir Sheokand, Advocate
for respondent No. 5 and 6

Rekha Mittal, J.

The present petition directs challenge against order dated 21.10.2015 passed by the Civil Judge (Senior Division), Ludhiana whereby application for amendment of the plaint has been dismissed.

Counsel for the petitioner would argue that petitioner with Gurdev Kaur, co-plaintiff filed suit for possession in respect of land measuring 16 kanal 12 marlas, detailed in head note of the plaint and also assailed sale deeds dated 29.4.2008 executed by defendant No. 1 in favour of defendant No. 4 and dated 10.10.2008 by defendant No. 1 in favour of defendants No. 5 and 6 and mutation sanctioned on the basis of aforesaid sale deeds. The petitioner filed application for amendment to the following effect:-

“The plaintiff wants to amend heading of plaint as under:-

“After the words khewat No. 280/1 khatauni No. 304/1

“consisting of khasra Nos. 61/25/3 instead of 66/25/3 and

similarly khasra No. 73//12/2 in stead of 77//12/2” and

similarly in body of the plaint as well as in the prayer

clause wants to make amendment/correct clerical

mistake.”

It was pleaded in para 3 of the application that during pendency of suit when the plaintiff went to patwari halqa to get the stay order noted in the roznamcha, this clerical mistake came to notice of the applicant. It is argued that proposed amendment would neither change nature of the suit nor cause prejudice to the contesting party for which costs is not a remedy. It is vehemently argued that there is nothing on record suggestive of the fact that proposed amendment is mala fide or can be rejected on a justifiable legal ground. Counsel would inform that in case the proposed amendment is allowed, the plaintiffs do not intend to adduce any fresh evidence.

Counsel representing respondents No. 1 and 2, on the contrary, has supported impugned order with the submission that correction sought to be made can not be said to be a typographical error. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **J. Samuel and others vs. Gattu Mahesh and others 2012(1) RCR (Civil) 903**. Counsel would argue with vehemence that in case the proposed amendment is allowed it would result in permitting the petitioner to introduce a time barred claim to challenge sale deeds of the year 2008 in the year 2015, beyond a period of three years from the date of its execution.

Counsel for respondents No. 4 to 6 has echoed the arguments advanced by counsel for respondents No. 1 and 2.

I have heard counsel for the parties, perused the paper book particularly the documents annexed thereto.

Before advertng to the submissions made by counsel for the parties, it is appropriate to recapitulate the principles culled out by Hon'ble the Supreme Court in ***“Revajeetu Builders and Developers vs. Narayanaswamy and sons and others”***, 2010(1) RCR (Civil) 27. A relevant extract from paras 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?

And

- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule

17. These are only illustrative and not exhaustive.”

Counsel for the respondents has raised an argument that correction in the plaint sought to be made by way of amendment can not be said to be clerical/typographical by relying upon judgment of Hon'ble the Supreme Court **J. Samuel and others' case (supra)** wherein the appellants had failed to plead ingredients of Section 16(c) of Specific Relief Act in a suit for specific performance of contract and it was held that omission of mandatory requirement of Section 16(c) running into 3 to 4 sentences can not held to be typographical error. However, in the case at hand, the petitioner sought to correct khasra Nos. 61/25/3 instead of 66/25/3 and similarly khasra No. 73//12/2 in stead of 77//12/2. The nature of amendment sought in the instant case, by no terms can be equated with the amendment that was subject matter in **J. Samuel and others' case (supra)**. That being so, the respondents can not derive any advantage to their contention from the referred authority.

There is no dispute that amendment can not be allowed to introduce a claim that had become barred by time, as has been so held by Hon'ble the Supreme Court in **Shiv Gopal Sah @ Shiv Gopal Sahu vs. Sita Ram Saraugi and others 2007(2) RCR (Civil) 679** relied upon by the respondents and **Revajeetu Builders and Developers' case (supra)**.

In the case at hand, petitioner has assailed sale deeds of the year 2008 but she has not sought any correction to be made in respect of khasra numbers that stand incorporated in those sale deeds meaning thereby that she is not making any modification in respect of sale deeds sought to be challenged in the suit. On the contrary, if in the sale deeds sought to be

challenged, aforesaid khasra numbers. have been mentioned as 66/25/3 and 77//12/2, it will be for the trial court to examine the effect of that contradiction in the case of petitioner/plaintiff and further whether the plaintiff would be entitle to seek necessary declaration in respect of khasra numbers contained in head note of the plaint despite the same being not matching with khasra numbers mentioned in the sale deed. As the petitioner has not sought to make any amendment in contents of the sale deed, I find it difficult to accept contention of the respondents that in case proposed amendment is allowed it would amount to permitting the petitioner to introduce a time barred claim, therefore, can be prejudicial to the respondents for which costs is not the remedy. In this view of the matter, I find merit in contention of the petitioner that proposed amendment can be allowed when examined in the light of principles laid down in ***Revajeetu Builders and Developers' case (supra)***. As a result, the impugned order is liable to be set aside and ordered accordingly.

For the foregoing reasons, the petition is allowed. The application for amendment of the plaint to the aforesaid extent is allowed, subject to payment of costs of Rs. 10,000/-, to be shared by the defendants before the trial court. The petitioner or her co-plaintiff shall not be entitle to adduce any evidence on the basis of amendment of the plaint. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

29.1.2020

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No