

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

CR No.1343 of 2020(O&M)

Date of Decision:26.2.2020

Narinder Singh and others

... Petitioners

Versus

Swaran Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.H.S.Dhandi, Advocate for the petitioners

RAJIV NARAIN RAINA, J. (Oral)

1. This petition arises out of partition proceedings in a suit for separate possession of the property described in the head note to the plaint in Civil Suit No.100 of 2015 in cause title identical to the memorandum of parties in the present petition instituted under Article 227 of the Constitution challenging the order dated 28.1.2020, whereby the application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short “the CPC”) for amendments in the plaint has been dismissed by the Civil Judge (Jr.Division), Phagwara. The plaintiffs have also claimed in the suit permanent prohibitory injunction restraining the defendants from alienating, transferring, exchanging, mortgaging and disposing off any specific portion of the suit house/plot/building over land larger than their respective shares in the property and from changing the nature of the corpus and to further restrain them from raising any sort of construction upon the land without getting the same partitioned.

2. The amendment was sought in the plaint at the stage of rebuttal and final hearing when it is alleged that the counsel while preparing the case for arguments fell upon the mistake attributed to computer printing leaving out material facts which led the plaintiffs to file the application for amendment of the plaint. The plaintiffs have been in litigation since 1991.

3. They submit that by amendment they want to tender documents relating to previous litigation including judgments and orders etc. That litigation pertains to the same land for which possession has been sought by way of division through legal partition.

4. The petitioning plaintiffs' assert in the amendment application that no fresh amendment is required and documents are only to be tendered in evidence. The mistake which has occurred in the original plaint is due to an oversight at the time of drafting the head note and the plaint, whereas the decrees, orders, judgments and decree-sheets sought to be tendered in evidence were in possession of the plaintiffs 1 & 2 and on the basis of which they became owners of 1/3rd share with specific khasra numbers. These inadvertently were "missed out" and "slipped" from the computer printing of the suit papers.

5. There can hardly be any doubt, that ownership is a condition precedent to partition of land by one mode or the other. The partition suits are filed on the basis of title establishing ownership rights over the property on which the claim for division is based among the co-sharers, who are the respondents numbering 58, all of whom have a right, title and interest in suit land. Seven of them have been identified as contesting respondents while the remaining have been arrayed as

proforma respondents in the suit and consequently in the present petition.

6. If the plaintiffs assert ownership over 1/3rd of the property with specific khasra numbers, they had knowledge of their title and rights from the inception of the suit. These judicial orders were missed out from the plaint on which their entire case rests today as projected in the application filed under Order 6 Rule 17 of the CPC. Parties went to trial on the strength of the suit filed in 2015 and after framing issues, evidence were led by both the sides and was closed by them without demur. The case was fixed for rebuttal and arguments for which the case was set down when the present application was moved.

7. The ingredients of Order 6 Rule 17 of the CPC begs the satisfaction of the court that inspite of due diligence, parties could not raise the matter before commencement of trial. The learned trial court has remained in the impugned order guided by the principles in Order 6 Rule 17 and recorded failure on the part of the plaintiffs to explain due diligence and therefore the application file belatedly must fail.

8. In my view, if the amendment is permitted and documents are tendered of which judicial notice can be taken being judgments and decrees of the judicial courts, it will lead to a separate mini trial which may affect the entire evidence adduced by the parties hitherto fore. This would take the defendants by surprise at a belated stage when the suit has matured for final arguments and passing of judgment. No one would say that five years is not enough to discover the mistake which is conveniently attributed to the drafting of the plaint, a plaint which was duly signed by the plaintiffs to start the trial with issues framed.

9. In the present partition proceedings, parties have already led evidence to assert their respective rights over the suit land and the buildings thereon and have taken their respective positions after examining each and every witness produced and introducing documentary evidence in support of their respective cases.

10. Proviso to Order 6 Rule 17 of the CPC prohibits entertaining applications for amendment, after the trial has commenced. The exception comes into operation when the court comes to the conclusion that inspite of due diligence, the parties could not have raised the matter before the commencement of the trial. This is admittedly not the position in this case. Amendments to plaint are to be construed strictly and with greater vigour than amendments to written statements. This is because the plaintiffs have to prove their case by pleading all the bundle of facts and proving them by a cohesive whole which might entitle them to decree. Failure to do so is to the peril of the plaintiffs and they cannot be excused except in exceptional circumstances, none of which kind are present in this case.

11. I may observe that the impugned order of the trial court though not very articulate to the extent it could have been, but that is no ground of challenge when the conclusion arrived at is in accordance with law on the given material. The law comes to the aid of the vigilant. The law always abhors delays. The law on the subject prior to Order 6 Rule 17 of the CPC being substituted by Act 22 of 2002 and in its original liberality stands transformed and a much stricter view has been superimposed by Parliament on the procedural rule. Accordingly, a sterner view is called for in dealing with applications for amendment to plaint at the fag-end of the case. Order 6 Rule 17 of the CPC is no longer

designed to start a sub-trial within the main trial and especially at the near end of it.

12. On the face of it, the request in the application is for tendering judgments and decrees of the previous litigation, but what impact those might have at the last milestone of the trial is a question of debate fraught with the vice of delay by presenting opportunity to the other side to change the contents of the written statement, which if allowed to late in the day, may change the complexion of the case in its entirety. An innocuous request of the kind can hold detrimental results causing prejudice to the defendants, if casually allowed, verily triggering off a de novo trial. I am in no position to explore those in-roads and unforeseen possibilities which may fallout of this adventure as none have been spelled out at the hearing. But one thing is certain the trial will be considerably delayed causing considerable prejudice to the defendants. Hence, it would be far safer to shut the application as ordered by the trial court and leave parties to make their submissions at the final hearing for which the case is fixed.

13. It is for these reasons, in addition to what the learned trial court has said, that persuade me to dismiss this petition in limine and to permit the trial to proceed on the basis of the materials on record to them to their logical conclusion.

14. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

26.2.2020
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No