

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR no. 8034 of 2019(O&M)
Date of Decision: 26.02.2020

Naveen Bector

.....Petitioner

versus

Rama Devi

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Hitesh Ghai, Advocate, for the petitioner.
Mr.Rajat Malhotra, Advocate for
Ms. Pridhi Jaswinder Sandhu, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

1. By this petition, the petitioner challenges the order dated 29.10.2019, of the learned trial court, dismissing his application filed under the provisions of Order VI Rule 17 of the CPC, by which he sought to amend his written statement.

It is necessary to notice at the outset that the petitioner is the son of the respondent-plaintiff.

2. A perusal of the impugned order shows that the application was filed at a stage when the case was fixed for the evidence of the petitioner, i.e. the defendant, the respondent/plaintiff already having led his evidence.

It has further been stated that the amendment sought by the defendant (erroneously shown to be the plaintiff in one part of the impugned order), was not of such a nature as was not in the knowledge of the petitioner/defendant previously, which he could not have raised with due diligence at the initial stage.

It has further been stated in the order that the trial had been fixed for the defendants' evidence since 24.09.2018, i.e. more than a year prior to the

passing of the impugned order, and consequently, in terms of the proviso to the Order VI Rule 17 CPC, the application could not be allowed at that stage.

3. Before this court, learned counsel for the petitioner submits that as a matter of fact the respondent/plaintiff had also amended her plaint at a stage when her evidence was being led, i.e. after the trial had started, which application was allowed on 12.10.2017, after which the petitioner filed a written statement to the amended plaint and thereafter moved the application that has been dismissed on 22.08.2019. He therefore submits that an indulgence having been granted to the respondent/plaintiff after the trial had started, the same concession could not have been refused to the petitioner, especially as the amendment that had been sought, is not of a nature that would alter his plea as already taken in the written statement, but is only in elaboration thereof.

In support of his argument he relies upon two judgements of the Supreme Court in “**Baldev Singh others vs. Manohar Singh and another**” 2006 (3) RCR(Civil) 844 and “**Raj Kumar Bhatia vs. Subhash Chander Bhatia**” 2018 (1) RCR(Civil) 275, as also two judgements of a co-ordinate bench of this Court, in “**Amar Singh vs. Nirmal Singh and another**” 2016 (3) RCR (Civil) 192 and “**Aadish Aggarwal vs. Brijeshwar Swaroop**” 2018 (1) PLR 270. From that judgment he points to paragraph 14, in which it was held that simply due to a delay in filing an application under Order VI rule 17 CPC, the amendment could not have been refused, in terms of the ratio of the judgments of the Supreme Court in “**Surender Kumar Sharma vs. Makhan Singh**” 2010 (1) PLR 231, as also **Baldev Singh** (supra).

4. Having considered the argument, though otherwise learned counsel for the petitioner is correct to the effect that amendment of a written statement is to be allowed more liberally than an amendment in a plaint, however, first,

the contents of the statutory provision, i.e. Order VI Rule 17 of the CPC, need to be seen, which read as follows (after the amendment came about w.e.f. 01.07.2002, with the suit in the present *lis* having been instituted by the respondent herein on November 20, 2017):-

“[17. **Amendment of pleadings.**-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]

5. Thus, the proviso to the said provision clearly stipulates that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of the trial.

It need not be elaborated any further that in the present case, with admittedly the amendment having been sought at a stage when the present petitioners', i.e. when the defendants' evidence was to be led, the trial was well underway.

It is also necessary to notice here that in the reply filed by the respondent-plaintiff, to the application of the petitioner under Order VI Rule 17 of the CPC, she had also raised a plea that the application had been filed only to delay the proceedings because earlier when the suit was fixed for arguments, the petitioner (defendant) had changed his counsel, who at that time had filed an application seeking framing of an additional issue.

Thereafter, again upon change of counsel, the application in

question had been filed, with the petitioner-defendant also having led his evidence, at least to a large extent.

6. It is also necessary to look at what the respondent-plaintiff is seeking in her plaint and the nature of the amendment now sought to be made in the written statement at the fag end of the trial, by the present petitioner.

The suit is one seeking a decree of mandatory injunction directing the present petitioner to vacate the suit property and to deliver its possession to the respondent-plaintiff, with further a decree of prohibitory injunction sought, restraining the petitioner from raising any construction over the property.

Upon the respondent-plaintiff having amended her plaint, as already noticed, the petitioner had duly filed a written statement thereto on 16.01.2018, i.e. 8 months prior to the filing of the application for amendment.

Now, by way of an amendment, he wished to add three paragraphs to his written statement, in the preliminary objections.

7. The first paragraph is a defence taken on the suit being bad on account of non-joinder of necessary parties, to the extent that with the petitioner (as contended) living in the suit property alongwith his wife and two sons, they not having been impleaded in the suit, it was therefore bad on account of non-joinder of necessary parties.

The 2nd addition sought to the preliminary objections taken in the written statement, was to the effect that the petitioner at no point of time any relationship of a licencor and licensee ever existed between the parties, and consequently no licence in favour of the petitioner-defendant had ever come about, with the petitioner being one of the legal heirs and owners of the property, he also having constructed a kitchen in a portion of the area under his occupation and therefore the plea with regard to the creation of any licence

could not be taken by the respondent-plaintiff, with the petitioner further contending that in fact he was born on the suit property, with his wife having come into that property after her marriage and with no objection raised at any stage to the petitioner continuing to live in the property.

Within that added preliminary objection, the petitioner also sought to add the fact that the plaintiff and other family members started raising a dispute and taunting the petitioners' wife for bringing insufficient dowry, with the result that the petitioner eventually started living on the first floor of the property, on which he constructed a new kitchen.

The last addition to the preliminary objections, that the petitioner wished to add by way of the amendment, was that the suit had been filed with malafide intentions, in connivance with the other sons of the plaintiff, and that by way of another civil suit filed by the petitioner against another son of the plaintiff (i.e. the petitioners' brother), he had sought separate possession of another property (which is contended to be in the joint possession of the parties to that suit).

Consequently, it was contended by the petitioner that the amendments sought by way of the aforesaid added preliminary objections, were only an elaboration of the facts already mentioned in the written statement, and as legal pleas to be now added.

8. Having noticed the above, it is seen that in the written statement already filed by the petitioner, the background of the property, as also the dispute between the parties, including an incident of (allegedly) the petitioner being allowed the instal machinery in the property, by the plaintiff, has been stated, with it also stated that the shed on the property was in existence since the birth of the petitioner, with no new construction raised thereon, he further

having stated that he had inherited the property from his fore-fathers and that the respondent-plaintiff, i.e. his mother, had no right or title to grant or cancel the licence on the property.

Other than the above of course, the reply on the merits of the plaint has been given, which need not be gone into, as no amendment in that part of the written statement was sought by the petitioner in his application that has been dismissed vide the impugned order.

9. Having considered the matter, I agree with what has been held by the trial court, that the amendment sought at this stage, taking at least one inconsistent plea (though otherwise that may not have been contrary to the rights of the petitioner), at this stage, was only to delay the proceedings in the trial, especially as the petitioner had already filed a written statement to the amended plaint and had, thereafter, even got an additional issue framed after change of his first counsel, with the trial court having observed that this application has been moved after change of yet another counsel.

10. Thus, though otherwise the ratio of the judgments cited by the petitioner would be that an amendment in a written statement, if necessary for the just decision of the case, should not be treated to be on the same footing as that of an amendment to the plaint, yet, the statutory provision (the proviso to Order VI Rule 17 of the CPC) does not distinguish between a plaint and a written statement.

Having said that, of course it is reiterated that as per settled law amendment in a written statement is to be allowed more liberally than an amendment in the plaint, after the trial has commenced. Even so, in the present case, looking at the fact that the petitioner is in fact the son of the respondent (his mother) and has also earlier successfully got another issue added to the

issue already framed after filing a written statement to the amended plaint, the application in question undoubtedly seems to have been filed only to delay proceedings, with in fact the main plea of the petitioner in his written statement being that he having resided in the property since his birth, he has inherited a right to its title.

That being a plea that he has already taken in his written statement earlier, further elaboration thereupon, simply to state that he is not a licensee therein, would not be necessary in my opinion, and the application therefore has been correctly rejected vide the impugned order, at the belated stage that it was moved on.

Naturally, whether the petitioner is a licensee or not, or has any inherent right to the suit property, would be issues to be considered and decided by the trial court after examining the entire evidence led before it, with this court not, (again obviously), not making any comment on the merits thereof, whatsoever.

Consequently, finding no merit in this petition, it is dismissed, with it to be observed again that nothing stated hereinafore shall be taken to be an observation of this court on the merits of the case of either party, but only in the context of whether or not the impugned order has been correctly passed by the trial court, which this court finds has been correctly passed by it.

February 26, 2020
dharamvir/dinesh

Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)
JUDGE

Yes
Yes