

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

**CIVIL REVISION No.7304 of 2017 (O&M)
DATE OF DECISION : 17.12.2021**

Tarsem Lal & AnotherPetitioners

versus

Baljit Kaur & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pritam Singh Saini, Advocate for the petitioners

Mr. Puneet Bansal, Advocate for the respondents

ALKA SARIN, J.:

Heard in physical mode.

The present civil revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 20.09.2017 (Annexure P-7) passed by the Civil Judge (Junior Division), Kharar whereby the application of the plaintiff-petitioners for amendment of the plaint has been dismissed.

The brief facts relevant to the present *lis* are that on 14.03.2013 the plaintiff-petitioners filed a suit for possession, permanent injunction and recovery. It was averred in the plaint (Annexure P-1) that the defendants are owners of land measuring 10 biswa being 50/222 share

of land measuring 4 kanals – 15 marlas situated at Village Khuni Majra, Tehsil Kharar, District SAS Nagar, Mohali as per entries contained in the copy of Jamabandi for the year 2006-07 and that deceased Charan Singh had executed an agreement to sell in favour of the plaintiffs in respect of the said land and that as per the terms and conditions of agreement to sell dated 21.04.2009, deceased Charan Singh had agreed to execute the sale deed in favour of plaintiffs for total consideration of Rs.8,00,000/- out of which the plaintiffs had paid Rs.1,00,000/- to him at the time of execution of agreement to sell and that deceased Charan Singh had agreed to execute the sale deed after receiving the balance sale consideration i.e. Rs.7,00,000/-. It was averred that on 04.08.2009 the plaintiffs paid another sum of Rs.7,00,000/- to the deceased Charan Singh which was full and final payment of the total sale consideration. The plaintiffs further submitted that the deceased Charan Singh had also agreed that if he failed to execute the sale deed in favour of plaintiffs on the fixed date then the plaintiffs will be entitled to get the sale deed executed and registered through competent court of law and also entitled to get damages of Rs.8,00,000/-. Charan Singh died on 12.09.2009 and due to his death the suit property could not be transferred or registered in the name of plaintiffs but after his death both the plaintiffs had become the absolute owners of the suit property as per the agreement to sell. According to the plaintiffs, when the full and final payment was received by the deceased Charan Singh regarding the suit property, he prepared three documents - agreement to sell 21.04.2009, Will dated 04.08.2009 in favour of the plaintiffs, and a general power of attorney dated 04.08.2009 in favour of the plaintiffs

which showed his intention regarding the suit property. The plaintiffs were ready and willing to get the sale deed executed in their favour on the basis of agreement to sell dated 21.04.2009. The defendants in the suit are the widow and children of deceased Charan Singh.

The suit was contested by the defendant-respondents who filed written statement raising preliminary objections to the effect that the suit was time barred, not maintainable, the plaintiffs are guilty of laches and delay. On merits, it was stated that deceased Charan Singh never entered into an agreement with the plaintiffs regarding suit land and that deceased Charan Singh was addicted to various intoxicants and always remained under the influence of intoxicants and it was possible that the plaintiffs might have obtained the signatures of deceased Charan Singh on different papers after administering him heavy doses of intoxicants without telling him as to on which papers the signatures were being obtained and as to what matter the papers related to. It was also stated that deceased Charan Singh never entered into an agreement as alleged on 21.04.2009 for selling the suit land for an amount of Rs.8,00,000/- and he never received Rs.1,00,000/- as mentioned in the plaint and also never received Rs.7,00,000/- later on 04.08.2009 and never delivered the possession of the suit land.

Upon appraisal of the documentary and oral evidence led by the parties, the Trial Court vide judgement and decree dated 29.10.2016 dismissed the suit of the plaintiff-petitioners. However, vide judgement and decree dated 18.07.2017 (Annexure P-4) the Lower Appellate Court accepted the appeal of the plaintiff-petitioners, set aside the judgement of

the Trial Court and remanded the case back to the Trial Court with a direction to hear arguments and to pass a fresh judgment. The operative portion of the decision by the Lower Appellate Court reads as under :

“Keeping in view the lack of clarity coming forth in the judgment, the appeal is hereby accepted and the impugned judgment is set aside and further the case is remanded back to the lower Court, with the direction to hear the arguments and to pass a fresh judgment, thereby giving appropriate findings on the issues framed in the case. Parties are directed to make appearance before the lower Court on 01.08.2017. Lower Court record be returned. Decree sheet be prepared. Appeal file be consigned to the Record Room”.

After remand of the suit vide judgement dated 18.07.2017, on 06.09.2017 the plaintiff-petitioners filed an application (Annexure P-5) before the Trial Court for amendment of the plaint. By the amendment sought, the plaintiff-petitioners wanted to introduce an agreement to sell dated 04.08.2009 executed in their favour by deceased Charan Singh. According to the plaintiff-petitioners they had engaged a new counsel and then came to know that the suit had not been filed on the basis of full and final agreement dated 04.08.2009. By the proposed amendment the plaintiff-petitioners *inter-alia* wanted to aver that upon receipt of the full sale consideration the deceased Charan Singh had executed agreement dated 04.08.2009 with both the plaintiff-petitioners and the agreement

dated 21.04.2009 merged into the agreement dated 04.08.2009. The defendant-respondents contested the said application and filed a reply (Annexure P-6). The Trial Court vide impugned order dated 20.09.2017 (Annexure P-7) dismissed the amendment application. Hence, the present civil revision petition.

Learned counsel for the plaintiff-petitioners has contended that the Trial Court has erred in dismissing the amendment application. According to him the earlier counsel for the plaintiff-petitioners had not mentioned about the agreement dated 04.08.2009 in the plaint and therefore the party ought not to suffer because of a lapse by the counsel. He also contended that the amendment sought was necessary for the decision of the case and that the defendant-respondents were also aware about the existence of the agreement dated 04.08.2009 and had filed an application (Annexure P-3) for its production. It was submitted by the counsel that the deceased Charan Singh had on 04.08.2009 executed a general power of attorney and a Will, both in favour of the plaintiff-petitioners, and in these circumstances the amendment sought was justified and would not cause any prejudice to the defendant-respondents. In support of his submissions, the learned counsel for the plaintiff-petitioners placed reliance on the decisions in **“Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.”** [2009(10) SCC 84], **“Mahila Ramkali Devi & Ors. vs. Nandram (Dead) & Ors.”** [2015(13) SCC 132], **“Mohinder Kumar Mehra vs. Roop Rani Mehra & Ors.”** [2018(2) SCC 132], and **“Randhir Singh vs. State of Haryana”** [CWP-1624-2015 decided on 30.01.2015].

Per contra, learned counsel for the defendant-respondents has submitted that there is no error in the impugned order passed by the Trial Court. According to him the plaintiff-petitioners have not given any satisfactory explanation for not basing their suit on the agreement dated 04.08.2009. It was submitted that the plaintiff-petitioners did not raise any plea regarding the agreement dated 04.08.2009 in their pleadings or in their evidence and eventually their suit was dismissed by the Trial Court. Even before the Lower Appellate Court no plea about any such agreement was raised. According to the learned counsel allowing the proposed amendment would amount to setting up a new case and undertaking a *de-novo* trial. In support of his submissions, the counsel for the defendant-respondents placed reliance on the decisions in **“Vidyabai & Ors. vs. Padmalatha & Anr.”** [2009(2) SCC 409]. He also cited **“Avinash Kumar Chauhan vs. Vijay Krishna Mishra”** [2009(2) SCC 532], **“Barium Chemicals Ltd. vs. Vishwa Bharati Mining Corp. & Anr.”** [2009(16) SCC 262] and **“Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram vs. Bhaskar Raju & Bros.”** [2020(4) SCC 612] on the point that since the agreement dated 04.08.2009 (Annexure P-2 with the present petition) was not sufficiently stamped and registered it could not be led into evidence so amendment of the plaint would be of no consequence.

I have heard counsel for the parties and perused the paperbook.

The suit was filed in 2013 and the original plaint (Annexure P-1) reveals that the plaintiff-petitioners had based their suit only on an agreement to sell dated 21.04.2009. The suit was dismissed vide judgement

and decree dated 29.10.2016. The appeal of the plaintiff-petitioners was allowed by the Lower Appellate Court on 18.07.2017 and the matter was remanded to the Trial Court. No application for amendment was moved before the Lower Appellate Court. It was only on 06.09.2017, after remand, that the amendment application was filed by the plaintiff-petitioners before the Trial Court. In the amendment application the plaintiff-petitioners have put the blame on their earlier counsel for not filing the suit on the basis of the agreement dated 04.08.2009. This Court is unable to accept that from 2013 till 2017 the plaintiff-petitioners were not aware what was mentioned in the plaint. For inexplicable reasons they chose to stay silent before the Trial Court and also before the Lower Appellate Court and woke up only after the remand. There is gross delay on the part of the plaintiff-petitioners without any plausible justification.

There is no dispute with the proposition of law that the amendment of pleadings can be permitted at any stage in order to determine the real controversy involved in the case. But, at the same time the amendment of the pleadings cannot be permitted to substantially change the nature of the case. In the original plaint the reliance by the plaintiff-petitioners is only on the agreement dated 21.04.2009 but now they want to base their suit on an agreement dated 04.08.2009. The explanation given by the plaintiff-petitioners that the suit was originally not based on the agreement dated 04.08.2009 because of mistake of their counsel has no substance as they have contested the suit throughout in the Trial Court and even led evidence to prove the agreement dated 21.04.2009. Their appeal before the Lower Appellate Court was also based

on the agreement dated 21.04.2009. At no stage of the suit or appeal the plaintiff-petitioners raised any plea about a deficiency in their plaint. Moreover, the plea which the plaintiff-petitioners want to raise now by way of amendment of the plaint was very much in their knowledge from very beginning and they did not make any endeavour to seek amendment of the plaint before the commencement of the trial or even during the trial or even during the appeal.

A perusal of the amendment application also shows that infact the plaint is virtually being re-drafted. Out of fifteen paragraphs in the original plaint as many as eight paragraphs (paras 1, 2, 3, 5, 8, 9, 10 and 11) are sought to be amended apart from the heading and the prayer clause in the plaint. The cause of action for filing the suit is also being sought to be amended. The proposed amendment will clearly substantially alter the nature of the suit. If the amendment is allowed, a *de-novo* trial will be required as the defendant-respondents will also file a written statement to the amended plaint, additional issues may be required to be framed and fresh evidence may also have to be led.

Further, the Lower Appellate Court, while accepting the appeal of the plaintiff-petitioners, set aside the judgement of the Trial Court and remanded the case back to the Trial Court only with a direction to hear arguments and to pass a fresh judgment.

In the case of **Revajeetu Builders & Developers** (*supra*) cited on behalf of the plaintiff-petitioners it was inter-alia held :

“63. On critically analysing 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.”

The civil appeal was dismissed by the Supreme Court and the amendment to the plaint was not permitted.

In the case of **Mahila Ramkali Devi & Ors.** (*supra*) the amendment of the plaint was allowed by the Supreme Court after forty years of the filing of the suit. In the present case the suit was filed in the year 2013 and in order to seek amendment to the pleadings it is necessary that the plaintiff-petitioners satisfy the Court that the facts sought to be

pleaded by way of amendment could not be pleaded before commencement of trial despite due diligence. The facts now sought to be pleaded in the plaint by way of amendment do not satisfy the test laid down in the proviso to Order VI Rule 17 CPC. Thus, the plaintiff-petitioners will not be able to derive any advantage by placing reliance on the case of **Mahila Ramkali Devi & Ors.** (*supra*). The plaintiff-petitioners cannot be permitted to seek amendment in the plaint to raise pleas which were well within their knowledge at the stage when the suit was filed.

In the case of **Mohinder Kumar Mehra** (*supra*) the amendment application was filed even before evidence was led by the parties. It is noted by the Supreme Court that :

“The proviso to Order 6 Rule 17 CPC prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could lead evidence, the amendment application has been filed and from the order dated 14.2.2014 [Mohinder Kumar Mehra v. Roop Rani Mehra, 2014 SCC OnLine Del 7618] , it is clear that the plaintiff's case is that parties have led evidence even on the amended pleadings and the plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing of the amendment was a mere

formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him.

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24. Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case, no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We, thus, are of the view that looking to the purpose and object of the proviso, the present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the proviso.”

In the present case the amendment application was filed after completion of the trial, after the dismissal of the suit by the Trial Court and after the decision by the Lower Appellate Court. Thus, the said citation is distinguishable and does not have a bearing on the facts and circumstances of the present case.

The case of **Randhir Singh** (*supra*) can also not be applied to the present case as the said case pertains to dismissal in default of a revision petition due to non-appearance by the counsel – for the third time.

Allowing or disallowing amendment of pleadings depends on the facts and circumstances of every case. There is no straight-jacket

formula which can be applied across the board in every case. This Court would not substitute its opinion or interfere with the findings of fact recorded by the Trial Court if there is no infirmity or perversity. In the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this Court in its supervisory power under Article 227 of the Constitution of India. In the present case, in view of the discussion above, the plaintiff-petitioners have not been able to make out a case to permit amendment of the plaint. There is no error in the exercise of jurisdiction by the Trial Court while passing the impugned order.

The revision petition is accordingly dismissed.

(ALKA SARIN)
JUDGE

17.12.2021
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<u>NOTE</u> : Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
