

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

243

CR No.6280 of 2016

Reserved on : 06.12.2022

Date of Decision : 14.12.2022

Sonia and Others

....Petitioners

VERSUS

Sat Pal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Tarun Yadav, Advocate and
Ms. Pooja, Advocate for the petitioners.

Mr. Tejas Bansal, Advocate for
Mr. Sanjiv Kumar Bansal, Advocate for the respondents.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 19.08.2016 dismissing the application filed by the plaintiff-petitioners for amendment of the plaint.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for declaration and permanent injunction. It is averred in the plaint that defendant-respondent no.2 sold land measuring 43 *kanals* 12½ *marlas* out of 103 *kanals* 05 *marlas*, as detailed in para 1 of the plaint, to Jai Singh, predecessor-in-interest of defendant-respondent nos.4 to 9 and the LRs of Jai Singh i.e. defendant-respondent nos.4 to 9 further sold the land measuring 43 *kanals* 9 *marlas* 02 *sarsasi* to the plaintiff-petitioners in equal shares vide registered sale deed dated 09.09.2011 for a total sale consideration of Rs.65,25,000/-. It is further the case set up that a calculated fraud is committed on the plaintiff-petitioners as none of the defendants disclosed about the pendency of the civil suit titled 'Satpal vs. Sheonan' and

that the plaintiff-petitioners are the *bona fide* purchasers. A decree for

declaration was prayed for that they are owners in possession of the suit land and the impugned judgment and decree dated 15.02.2008 and subsequent decrees are null and void and not binding on the rights of the plaintiff-petitioners.

During the pendency of the suit, when the case was still at the stage of the evidence of the plaintiff-petitioners, an application was filed seeking to amend the plaint by inserting para 8(a) which para reads as under:

“8(a) That in the alternative if the Hon’ble Court holds that the sale deed executed by defendant No.2 in favour of Jai Singh regarding suit land via registered sale deed No.684/1 dated 04.06.2004 and further sale by legal heirs of Jai Singh i.e. defendants No.4 to 9 vide registered sale deed No.2082/1 dated 09.09.2011 in favour of defendant to be hit by the principle of lis pendens, then the plaintiffs are entitled to the compensation to the tune of sale consideration, amount of 8 Kls. of the land from deft. No.4 to 9 of which the decree has been obtained by defendant No.1.”

and also to add the following prayer as sub para to para 13 of the plaint:

“That in the alternative if the suit of the plaintiffs for declaration and permanent injunction as consequential relief is not decreed then a decree for compensation of the amount of sale consideration of 8 Kls. i.e. Rs.12,01,381/- be passed in favour of the plaintiffs and against the defendants.”

The said application was contested by the defendant-respondents. Vide the impugned order the application has been dismissed. Aggrieved by the same, the present revision petition has been preferred.

Learned counsel for the plaintiff-petitioners would contend that the prayer sought to be added is only an alternate relief and that a total fraud has been played upon the plaintiff-petitioners. They are only seeking the refund of the amount from defendant-respondent nos.4 to 9 in case the first relief is not granted. It is further the contention of learned counsel for the plaintiff-petitioners that the said amendment would not change the nature of the suit.

Per contra learned counsel for the defendant-respondents has vehemently contended that the amendment would change the nature of the suit and that amendment of pleadings cannot be allowed when the trial has commenced.

In the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [Civil Appeal No.5909 of 2002 arising out of SLP (C) No.22443 of 2019 decided on 01.09.2022]** their Lordships of the Supreme Court have held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in

controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the

amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897)".*

In the present case, the amendment would be necessary for determining the real question in controversy. Learned counsel for the defendant-respondents has not been able to show how the said amendment would cause any injustice or prejudice which could not be compensated by way of payment of costs. The present amendment would also avoid multiplicity of the proceedings.

In view of the above, the present revision petition is allowed.

The impugned order is set aside and consequently the application for amendment of the plaint filed by the plaintiff-petitioners stands allowed, subject to payment of Rs.30,000/- as costs to be paid to the defendant-respondents. Pending applications, if any, also stand disposed off.

14.12.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO