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

**CR-5146-2022 (O&M)
Date of Decision: 22.11.2022**

JAGROOP SINGH AND ORS.

..... PETITIONERS

VS

SADHU SINGH(DECEASED) THROUGH LRS. AND ORS.

..... RESPONDENTS

CORAM : HON'BLE MR.JUSTICE ALOK JAIN

Present :- Mr. Harish Goyal, Advocate
for the petitioners.

ALOK JAIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 15.10.2022 (Annexure P-1) passed by learned Civil Judge, Mohali, whereby the application under Order 6 Rule 17, Code of Civil Procedure, 1908 filed by the petitioners for amendment of the plaint was dismissed.

The brief facts of the case are that the petitioners have filed a suit for separate possession by way of partition against the respondents and the respondents in their reply have specifically taken a stand that the partition has already been effected and the parties are owners in possession of their respective shares and moreso, the property being self-acquired property has

been developed by raising construction with their own means. The trial is at the stage of rebuttal evidence and arguments and, at this stage, the petitioners-plaintiffs filed an application for amendment of the plaint and prayed for adding the relief of declaration along with the relief of partition earlier prayed for and as also sought permission to add the word “ancestral” in the head-note. The application also sought amendment to the fact with regard to the area in possession of the defendants.

Learned counsel for the petitioners submits that for deciding the suit for partition, the learned trial Court will have to decide the issue of ownership and the percentage of holding of the parties and therefore, the amendment is just necessary. He further submits that the said amendment will not change the nature of the suit and moreover, no additional pleadings are required. He submits that the petitioner shall not lead any additional evidence and will constrain with his pleadings and evidence already on record. The said suit filed on 06.08.2018 and the issues were framed on 26.09.2019. It is an admitted case of the petitioners that the evidence was concluded and closed by suffering a statement on 10.12.2019 and the defendants have also closed the evidence on 29.08.2022.

In view of the above facts that the suit was filed on 06.08.2018 but a perusal of the documents especially the plaint discloses that the petitioners had earlier also filed suit for separate possession, however, the same was dismissed as withdrawn with liberty to file a fresh one on the same cause of action, but the petitioners chose not to add the relief, as is being now

sought to be added by way of amendment. It is the settled principle of law that where the amendment is sought as such after the trial has begun, the same has to undergo the following test as to whether:

- (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)”.*

However, a prayer for amendment is not allowed when the amendment sought, changes the nature of the suit and/or the other side loses a valid defence.

In the present case, the amendment sought will change the nature of suit and also effect the defence already taken by the defendant. In addition to the above, the argument raised by the petitioners that for deciding the suit, the amendment is necessary, is wrong and incorrect. In every suit for partition the finding qua the ownership has to be recorded and the same is implicit for

the Courts to do the needful. The Apex Court in judgment titled as “**Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. & Ors.**”, (2018)11 SCC 722 decided in Civil Appeal No.5909 of 2022 has laid down the principles and the relevant are as below:

“(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) (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 pinpointedly 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)”

A perusal of above dicta by the Hon’ble Supreme Court bars the amendment where the other side loses a valid defence. Applying the said principle of law as established by the Supreme Court the prayer of the petitioners cannot be accepted. The amendment sought will change the complexion of the suit and the amount to *de nova* trial which is not permitted under law. The petitioners also failed to demonstrate that the amendment sought was beyond the knowledge, despite due diligence, and therefore, in the light of both the facts that (a) the amendment sought will change the complexion of the suit and (b) there is no ground and explanation for such an inordinate delay, the present petition lacks merit.

In the light of the above and finding no infirmity in the order passed by the learned Trial Court, the present petition fails and accordingly, dismissed.

(ALOK JAIN)
JUDGE

22.11.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No