

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8010-2019 (O&M)
Date of decision: 13.07.2022

Chamkaur Singh Deol and another

... Petitioners

Vs.

Gurpal Kaur Deol

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. N.S. Dadwal, Advocate
for the petitioners.

Mr. S.S. Ranghi, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 31.08.2019 passed by the Principal Judge, Family Court, Jagraon, vide which an application under Order 6 Rule 17 read with Section 151 CPC filed by the plaintiff, for amendment of the plaint, was allowed.

Brief facts of the case are that the respondent-plaintiff filed a civil suit for declaration to the effect that transfer deed dated 17.12.2012 executed by defendant No.1 in favour of defendant No.2 is an outcome of fraud and not binding on the maintenance rights of the plaintiff. It was also prayed that a decree for permanent injunction be granted restraining defendant No.2 from alienating the suit property.

Learned counsel for the petitioners submits that after evidence of the plaintiff-respondent was closed, she moved an application under Order 6 Rule 17 read with Section 151 CPC to amend the plaint that relief of mandatory injunction be granted directing defendant No.1 to pay maintenance @Rs.3,00/- per month under Section 18 of Hindu Adoption and Maintenance Act by creating a charge over the suit property in terms of Section 27 of the Act.

Defendants-petitioners contested the application by filing the reply.

Vide impugned order dated 31.08.2019, Principal Judge, Family Court, Jagraon allowed the application, by making the following observations: -

“6. I have weighed the contentions raised by the learned for the parties and have gone through the record carefully.

7. Perusal of the record reveals that the plaintiff filed the present suit challenging the transfer deed dated 17.12.2012 executed by her husband/defendant No.1 in favour of his brother i.e. defendant No.2. It has been claimed that the said transfer deed is illegal, null and void as the same has been executed to defeat the rights of the plaintiff to claim maintenance from defendant No.1. Now by way of amendment, the plaintiff in addition to getting the transfer deed set aside wants to claim the relief of maintenance as well. The proposed amendment has been opposed by the defendants on the grounds that the application has been filed at the belated stage when the trial has already commenced. Moreover, a suit for mandatory injunction to claim maintenance does not lie and instead only a suit for recovery lies. In this

*regard, this court is of the considered view that in Section 18 of the Hindu Adoption and Maintenance Act, 1956, the form in which the suit is to be filed has not been prescribed. Therefore, at this stage, it cannot be said that the suit for mandatory injunction claiming maintenance is outrightly barred. As regards the second objection that the application has been filed after the commencement of the trial, in **Abdu Rehman Abdul Rehman and another vs. Mohd.Ruldu and others 2012(4) Civil Court Cases 584 (S.C.)**, Hon'ble Supreme Court has held that the purpose of allowing the amendment is to minimise the litigation and further that all amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if it does not change the basic nature of the suit and further that a change in the nature of the relief claimed shall not be considered as a change in the nature of the suit and the bare amendment should be allowed in the larger interest of doing full and complete justice between the parties. In the light of the law laid down by the Hon'ble Supreme Court in the above cited case, it is clear that the amendment can be sought at any stage and amendment should be allowed if it minimises the litigation. If the proposed amendment is not allowed, the plaintiff would be required to file a separate suit claiming maintenance from the defendants under Section 18 of the Hindu Adoption and Maintenance Act, 1956, that will lead to multiplicity of litigation.*

The relief to claim maintenance from defendant No.1 is a valuable right of the wife and it cannot be said that such a relief is time barred.

8. So far as the question of filing of the court fee is concerned, when the definite sum has been claimed as maintenance, the plaintiff can be made to pay an advalorem court fee, if it is so payable, even when the plaintiff has claimed the said amount by filing a suit for mandatory injunction instead a suit for recovery. Therefore, even the objection raised by the defendants that the plaintiff has manoeuvred to avoid payment of advalorem court fee cannot be sustained in the eyes of law. Moreover, the relief now being sought by the plaintiff by way of amendment is apposite and germane to the relief initially sought by the plaintiff, whereby she claimed that the alleged transfer deed dated 17.12.2012 has been executed by defendant No.1 in favour of his brother i.e. defendant No.2 to avoid making payment of maintenance to her.

9. As a result of above discussion, the application for amendment is allowed subject to cost of Rs.1000/-.”

Learned counsel for the respondent-plaintiff, at the very outset, submits that post filing of the amended plaint, the petitioners will not lead any fresh evidence, as they have already led entire evidence before the trial Court and for the purpose of claiming the relief of mandatory injunction, evidence already recorded on behalf of the plaintiff will be read for the said purpose,

except that the plaintiff will have a right to lead rebuttal evidence qua the issues, onus of which is on the defendants.

In view of the statement made on behalf of the respondent-plaintiff, learned counsel for the petitioners submits that he does not intend to press this petition.

Accordingly, the present petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

13.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No