

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

CR-3186-2017(O&M)

Date of decision:-14.2.2023

Gurdial Singh (now deceased) through his LR

...Petitioner

Versus

Gurjit Singh (deceased) through his LRs and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sarju Puri, Advocate
for the petitioner.

Mr.Parvinder Singh, Advocate
for respondents 1(i) to (iii).

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 1.3.2017 passed by Civil Judge (Sr.Divn.), SBS Nagar vide which an application filed by the plaintiff for amendment of the plaint has been allowed. The revision petition has been filed by defendant – Gurdial Singh (since dead) through his LRs.

2. Briefly stated, facts of the case are that plaintiff Gurjit Singh had filed a suit against his father Gurdial Singh, brother Dilawar Singh and mother – Smt.Surinder Kaur seeking joint possession being coparcener in the land measuring 35 kanals 0 marla out of land measuring 139 kanals 0 marla situated in the area of village Chunarpur, Tehsil Nawanshahar, District SBS Nagar, alleging that this property is joint Hindu Family ancestral coparcenary property and the sale deeds executed by defendant No.1 in favour of defendants No.2 and 3 are sham and bogus

transactions ineffective qua the rights of the plaintiff. In that suit the plaintiff sought relief of permanent injunction also.

3. On notice, the defendants appeared and filed a written statement offering a contest. During the course of proceedings, the plaintiff filed an application for amendment of the plaint contending that there are clerical errors in calculation of the land, which has not been properly described, therefore a correction is required to be carried out for proper and effective adjudication of the case. *Inter alia*, in the application it was contended that the requisite correction is in consonance with the revenue record and the admission made by the plaintiff was wrong and against revenue record inasmuch as it was pleaded that estate of Namma had devolved upon Joginder Singh, whereas actually Joginder Singh is predeceased son of Namma and estate of deceased Namma had devolved upon his two sons Swaran Singh and Charan Singh and Gurdial Singh son of Joginder Singh by way of survivorship, in that way amendment was sought in the plaint at necessary places contending that despite due diligence such information was not within the knowledge of the plaintiffs.

4. The application was resisted by the defendants contending that plaintiff could not withdraw his admission at this stage; as a matter of fact the suit property is self acquired property of Gurdial Singh and estate of Namma had devolved through Will dated 25.8.1954 as mentioned in mutation Ex.P4. The defendants prayed for dismissal of the application.

5. After hearing arguments, the trial Court of Civil Judge(Sr.Divn.), SBS Nagar vide the impugned order dated 1.3.2017 had accepted the application. For ready reference, the operative part of the

order runs as under:

3. *Vide suit in hand, deceased plaintiff has claimed relief of joint possession being coparcener. It is specifically submitted that on death of deceased Namma, his estate devolved upon his son Joginder Singh. The parties to the suit have already lead their evidence.*

*As per settled position of law, at the time of dealing with application under Order 6 Rule 17 read with Section 151 CPC, the Court has to adopt liberal approach unless serious injustice and irreparable loss is likely to be caused to the other side or that the prayer for amendment is not bonafide. A party can not be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. It is further settled that howsoever negligent or careless may have been the first omission and howsoever late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. Mere delay in making the amendment application itself, is not enough to refuse the amendment as for delay, the other party can be compensated in terms of money – **Sadhu Singh Versus Balbir Kaur & Ors., 2013(4) Civil Courts Cases, 474 (P&H)** – relief upon. In accordance with the same, this court is of the considered opinion that amendment sought by the applicants does not go the roots of the case. The corrections in calculation of the land and the detail of khasra numbers is in consonance with the relief claimed by the plaintiffs. Similarly, it is an admitted fact that*

Joginder Singh is the predeceased son of Namma. It is not disputed that mutation Ex.P4 has been placed on file by the plaintiff themselves. Hence, the amendment in that regard sought to be incorporated is also clarificatory in nature. Merely on account of grant of permission to make the said correction, it does not amount to withdrawal of admission as the admission claimed by the respondents is itself against the actual record. It is not disputed that in accordance with “Ajendraprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors. 2007(1) RCR(Civil)481”, the amendment in the pleadings cannot be allowed after the commencement of trial. However, in accordance with “Baljinder Singh and another Vs. Raj Kumar Gupta, VOL.CLXXX-(2015-4), The Punjab Law Reporter, 463”, the details sought to be produced before the Court through amendment would facilitate this Court to adjudicate the controversy in question completely and effectively. Moreover, no prejudice is going to be caused to the defendants in case requisite permission for amendment is granted. However, if the respondents have been met with any prejudice by way of amendment, same is ordered to be compensated by payment of costs of Rs.2000/-, out of which Rs.1000/- shall be payable to the defendants and Rs.1000/- shall be deposited with free legal aid.

6. Feeling aggrieved by the said order, the defendant through his LR has approached this Court by way of filing the present revision petition, notice of which was issued to respondents and respondents No.1(i) to (iii) have appeared through counsel.

7. I have heard learned counsel for the parties besides going through the record.

8. The trial Court considering the rival contentions has observed that amendment sought is clarificatory in nature and does not amount to withdrawal of admission because admission as claimed by the defendants is against actual record. It has been specifically observed that the details sought to be produced before the Court through amendment would facilitate the Court to adjudicate the controversy in question completely and effectively.

9. Although learned counsel for the revision petitioner has argued that the proposed amendment is highly belated and the amendment if allowed would result in permitting the plaintiff to withdraw an admission and that would change the nature of the pleadings etc. But all these objections were also raised before the trial Court, which have been dealt with in a very effective and convincing manner and I do not see any reason to differ with the trial Court in that regard.

10. Learned counsel for the petitioner has referred to various judgments i.e. *Sajjan Kumar Versus Ram Kishan, 2005(13) SCC 189*, *Usha Devi Versus Rijwan Ahamd & Ors., 2008(1) RCR(Civil)840*, *Sadhu Singh Versus Balvir Kaur and ors. 2014(9) RCR(Civil) 2989*, *Anand Ram Versus Hans Raj and others, 2012(5) RCR(Civil)609* and *Darshan Singh Versus Governing Council Khalsa College Society and Ors., 2010(39) RCR(Civil) 254*. However, those judgments do not help the petitioner in any manner due to the different facts and circumstances of the case and the context in which observations had been made.

11. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

12. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 4.5.2017 directing the trial Court to adjourn the case beyond the date fixed by this Court as such comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

14.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No