

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

CR-4998-2013

Reserved on: 03.10.2023

Pronounced on: 15.11.2023

Munshi Ram

...Petitioner

VERSUS

Rakesh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sukhandeep Singh, Advocate
for the petitioner.

Ms. Deepika Sood, Advocate
for respondents No.1 to 3.

VIKRAM AGGARWAL, J

1. The present revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 26.07.2013 (Annexure P-6), passed by the Court of Civil Judge (Junior Division), Nuh vide which the application filed by respondent-defendant No.3 Naval Singh for amendment of written statement was allowed.

2. The petitioner-plaintiff filed a suit for possession with consequential relief of permanent injunction. The petitioner-plaintiff and respondents-defendants No.4 to 6 are real brothers and oral family settlement was pleaded amongst the brothers. The case set up was that the land comprised in Khasra No.28 had fallen to the share of the petitioner-plaintiff and the land comprised in Khasra No.86 had fallen to the share of respondents-defendants No.4 to 6. The land comprised in Khasra No.28 measured 17 marlas (hereinafter referred to as 'the disputed land'). It was alleged that the respondents-defendants No.1 to 3 were threatening to take

forcible possession of the disputed land. During the pendency of a previously instituted suit by the son of the petitioner-plaintiff, the respondents-defendants No.1 to 3 had taken forcible possession of the disputed land and had illegally started raising construction. Accordingly, the suit for possession and permanent injunction was filed.

2(i) The suit was resisted by the respondents-defendants No.1 and 2. Though respondents-defendants No.1 and 2 filed a joint written statement (Annexure P-2) and respondent-defendant No.3 filed his own separate written statement (Annexure P-3), the stand taken in both the written statements was the same. The previous suit filed by Kishan Singh son of the petitioner-plaintiff was pleaded in both the written statements stating that in view of the same, the present suit was not maintainable. It was averred that the respondents-defendants No.1 to 3 were in possession of the disputed land for the last more than 80 years. Certain preliminary objections with regard to cause of action, locus standi, the suit being barred by limitation etc. were raised. On merits, the family settlement etc. was denied and it was reiterated that the respondents-defendants No.1 and 2 were in actual physical and continuous possession of the disputed land for the last more than 80 years and had, therefore, become owners of the disputed land by way of adverse possession. In the written statement filed by respondent-defendant No.3, a counter claim was set up. A decree of declaration was sought to the effect that the respondent-defendant No.3 had become the owner of the disputed land by way of adverse possession. A decree of permanent injunction restraining the petitioner-plaintiff from dispossessing the respondent-defendant No.3 from the disputed land was also sought.

2(ii) Issues were framed. Trial commenced. Evidence of the petitioner-plaintiff concluded. At the stage of evidence of the respondents-defendants, an application under Order 6 Rule 17 CPC (Annexure P-4) was moved by the respondent-defendant No.3 for amendment of the written statement. A stand was taken that the petitioner-plaintiff and brothers of respondent-defendant No.3 were co-sharers alongwith the respondent-defendant No.3 in Khasra No.37 and that the parties to the suit were successors of common ancestors Ghasi. It was averred that respondent-defendant No.3 had raised his residential house in Khasra No.37. It was also pleaded that adjacent to Khasra No.37 was Khasra No.86 which was under the ownership of the petitioner-plaintiff and his brothers. It was also averred that the facts pleaded in the written statement had come to the notice of the respondent-defendant No.3 when he engaged another counsel, who disclosed the contents of the written statement while preparing for the evidence. Accordingly, certain amendments, as set out in the application were sought to be introduced in the written statement. The said application was opposed by way of a reply (Annexure P-5), filed by the petitioner-plaintiff.

3. By way of the impugned order dated 26.07.2013 (Annexure P-6), the application was allowed leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties and have perused the paper book.

5. Learned counsel for the petitioner-plaintiff submitted that the impugned order vide which the application for amendment in the written statement was allowed, is not sustainable. Learned counsel submitted that totally contrary stand to that taken in the original written statement was

sought to be taken in the amended written statement which would not be permissible. Learned counsel submitted that the respondent-defendant No.3 could not be permitted to take a diametrically opposite stand by way of an amendment and that too at a belated stage when the entire evidence of the petitioner-plaintiff had been concluded. Learned counsel referred to the provisions of Order 6 Rule 17 CPC and submitted that the amendment was introduced by the legislature with a specific purpose in mind and by allowing the application, the said purpose had been defeated. Learned counsel placed reliance upon the judgment of a Coordinate Bench of this Court in *Palak and another versus Gurdeep Singh 2019 (3) R.C.R. (Civil) 358.*

6. On the other hand, learned counsel for the respondent-defendant No.3 submitted that there is no illegality or infirmity in the impugned order. It was submitted that the defendants could always take up inconsistent pleas in the written statement and that the parameters for the amendment of a plaint were entirely different from that of a written statement. Reference was made to the original written statement and the application for amendment of the written statement and it was submitted that the allowing of the application would not cause any prejudice to the petitioner-plaintiff. In support of his contentions, learned counsel relied upon the judgment of Hon'ble Supreme Court of India in *Usha Balashaheb Swami & Ors. Versus Kiran Appaso Swami & Ors. 2007 (2) R.C.R. (Civil) 830, Sushil Kumar Jain versus Manoj Kumar & Anr. 2009 (3) R.C.R. (Civil) 899* as well as the judgment of a Coordinate Bench of this Court in *Sagar Singh Slathia versus Surinder Pal Singh 2009 (3) R.C.R. (Civil) 37.*

7. I have considered the submissions made by learned counsel for the parties.

8. Order 6 Rule 17 lays down as under:-

“Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

A plain reading of the provision shows that the Court can allow amendment in pleadings at any stage of the proceedings. It also lays down that all such amendments which may be necessary for the purpose of determining the real question in controversy can be made. The proviso provides that no application for amendment would be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

9. It is settled law that Courts must be liberal in granting the prayer for amendment, if the Court is of the view that if such an amendment is not allowed, a party, who has prayed for such an amendment shall suffer irreparable loss and injury. It is also well settled that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In the case of *M/s Ganesh Trading Co. v. Moji Ram*, (1978) 2 SCC 91, the

Hon’ble Apex Court laid down the following principles:-

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

10. In ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** 2022 AIR (SC) 4256, the Hon’ble Apex Court summed up the principles qua amendment of pleadings. It was laid down 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 negated.

(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 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)”

11. In ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others, decided on 09.10.2009, in Civil Appeal No.6921 of 2009,*** the Hon’ble Apex Court, while examining the entire law on the subject laid down certain principles qua amendment of pleadings:-

“67. On critically analyzing 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.”*

12. In so far as the law with regard to amendment of written statement is concerned, the same is well settled that the parameters for amendment of a plaint and that of a written statement are entirely different.

In the case of ***Usha Balashaheb Swami & Ors. Versus Kiran Appaso Swami & Ors.*** (supra), the Hon'ble Apex Court laid down that an amendment in pleadings could be permitted at any stage of the proceedings if the Court was of the view that such amendments may be necessary for determining the real question in controversy between the parties. It was held that it is also well settled that the Court should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. It was further held that in so far as the amendment of written statement is concerned, the principles for amendment of a plaint and that of a written statement stand on different footings. It was held that addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable whereas adding, altering or substituting a new cause of action in the plaint may be objectionable. A similar view was taken by the Hon'ble

Apex Court in the case of ***Sushil Kumar Jain versus Manoj Kumar & Anr.***

(supra). Reference was made by the Hon'ble Apex Court to the judgment in the case of *Baldev Singh Versus Manohar Singh 2006 (3) RCR (Civil) 844.*

13. Reverting to the facts of the present case, the suit filed by the petitioner-plaintiff pertained to the possession of the petitioner-plaintiff over land comprised in Khasra No.28. The possession of this land was stated to have been taken over by the respondents-defendants No.1 to 3 and suit for possession was filed to regain possession of the disputed land. The original stand of the respondents-defendants was that they had become owners in possession of the disputed land by way of adverse possession and accordingly a counter claim was also set up by the respondent-defendant No.3 seeking a declaration in this regard. By way of the amendment, initially a totally different stand was taken stating that the respondents-defendants/defendant No.3 and his brothers were co-sharers in land comprising Khasra No.37 which was adjacent to Khasra No.86. The plea of the adverse possession was withdrawn and so was the counter claim. Subsequently, in an affidavit filed by the respondent-defendant No.3, it was stated that the appellant-defendant No.3 had rights in land comprising Khasra No.28 also.

14. No doubt, the respondent-defendant No.3 took a contradictory stand in the application for amendment of the written statement and accordingly in the amended written statement. However, it has to be borne in mind that the petitioner-plaintiff is concerned only with land comprising Khasra No.28. It was his positive case that possession of the same was taken over by the respondents-defendants. The petitioner-plaintiff would not be concerned with land comprising Khasra No.37. Accordingly, in the considered opinion of this Court, the amendment would not harm the interest

of the petitioner-plaintiff. In any case, the petitioner-plaintiff would have to prove his case by leading cogent evidence especially the issues in which the onus is upon him. Similarly, the respondents-defendants would have to prove their stand. The petitioner-plaintiff would get an opportunity to repel the stand taken by the respondents-defendants. As has been laid down by the Hon'ble Apex Court in the judgments referred to in the preceding paragraphs, the defendant can very well take inconsistent pleas in the written statement and the test is that the said amendments should not cause any prejudice to the plaintiff. In the considered opinion of this Court, no prejudice would be caused to the petitioner-plaintiff by way of the amendment sought to be introduced in the written statement. Infact, the pendency of this revision petition before this Court for the last 10 years has definitely caused prejudice to the petitioner-plaintiff. The suit itself might as well have concluded by this time. Infact, the entire litigation may have come to an end.

Be that as it may, for the reasons, aforementioned, this Court does not find any illegality in the impugned order. In view of the same, the present revision petition is found to be devoid of merit and is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 15.11.2023
mamta

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No