

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CR-560-2020 (O&M)

Tej Paul Oswal
...Petitioner

VERSUS

Shammi and others
...Respondents

(ii) CR-944-2020 (O&M)

Bharatth Oswal
...Petitioner

VERSUS

Shamim and others
...Respondents

Date of Decision: September 05, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the petitioner (in CR-560-2020).

Mr.A.P.S.Sidhu, Advocate
for the petitioner (in CR-944-2020).

Mr.Namit Gautam, Advocate
for the contesting respondents.

ARCHANA PURI, J.

These are two revision petitions filed by the petitioners-
contesting defendants to assail the order dated 31.10.2019 (Annexure P-5)
passed by learned Court below, whereby, an application for seeking

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amendment of the plaint was allowed.

CR-560-2020 has been filed petitioner-Tej Paul Oswal, who was defendant No.5, before learned Court below and CR-944-2020 has been filed by petitioner-Bharatth Oswal, who was defendant No.11 before learned Court below.

The facts, as culled out, from the paperbook are that, initially, in the year 2009, contesting respondents-plaintiffs had filed a suit for mandatory injunction, thereby, seeking issuance of direction to the defendants to make necessary correction in the revenue record, by entering mutations of the land, as detailed in the head-note of the plaint, known as Oswal House, in favour of successors-in-interest of late Lachhman Dass and subsequent vendees-plaintiffs, who purchased the land vide sale deeds, as detailed in the plaint.

The contesting respondents-plaintiffs asserted themselves to be owner-in-possession of the suit property, which had been purchased by them from the predecessor, as mentioned in the plaint.

Only defendant No.5-Tej Paul Oswal and defendant No.11-Bharatth Oswal are the contesting defendants, whereas, the other defendants were proceeded against ex-parte. When the case was at the stage of the recording of the evidence, contesting respondents-plaintiffs Nand Kumar, Narinder Dev Avasthi and Harish Kumar filed their affidavits and Narinder Dev Avasthi was under cross-examination, the application for seeking amendment of the plaint was filed, wherein, the main relief sought by the respondents-plaintiffs was that on the basis of the ownership, they are entitled to be entered as owners in the revenue record and defendants No.1

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to 3 may be directed to enter and sanction the mutation, in favour of the plaintiffs. Even, it was asserted that in paragraph No.8 of the plaint, they have claimed declaration, by virtue of the purchases made by them vide sale deeds, referred to in the plaint and mutations, on the basis of the said sale deeds, are liable to be entered into revenue record, but however, inadvertently, the relief of declaration could not be mentioned in the head-note as well as in the prayer clause of the plaint and accordingly, the relief sought was to this extent of making addition of prayer of declaration, on the basis of the purchases, so made, in the head-note as well as in the prayer clause.

However, the petitioners-defendants, in their respective replies, had raised preliminary objections, thereby, disputing the maintainability of the application and also that the proposed amendment was within the knowledge of the plaintiffs. The proposed amendment will change the basic nature of the suit, filed by the plaintiffs and prejudice shall be caused to the answering defendants, if the proposed amendment is allowed, which will result into multiplicity of the litigation. Besides the same, it is submitted that valuable right, which has accrued to the defendants, cannot be taken away, by filing an application for seeking amendment. Moreover, the suit was filed 8 years ago.

Also further, in the reply, it is asserted about the time barred relief, by virtue of amendment, cannot be allowed, as per law of land.

After hearing learned counsel for the parties, learned Court below had allowed the amendment application, while observing that relief of declaration has been discussed in paragraph No.8 of the plaint and as such,

the plea of inadvertence, in seeking relief of decree of declaration, seems to be genuine.

Learned counsel for the petitioners, on the basis of the reply, so filed to the application before learned Court below, have also again submitted about the present application to be time barred and proposed amendment was within the knowledge of the respondents-plaintiffs and it will change the basic nature of the suit and it will amount to re-opening of the entire suit. Learned Court below, while passing the impugned order had completely overlooked the fact that the application, in hand, was filed after 10 years of filing of the suit and the claim is time barred.

To so substantiate their submissions, learned counsel for the petitioners have relied upon *Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Others*, 2010(1) RCR (Civil) 27, *South Konkan Distilleries & Anr. vs. Prabhakar Gajanan Naik & Ors.*, 2008(4) RCR (Civil) 513 and *State Bank of Hyderabad vs. Town Municipal Council*, 2007(1) RCR (Civil) 416.

On the other hand, learned counsel for the respondents-plaintiffs had submitted that the amendment sought is only clarificatory in nature, as plea of declaration has been sought and pleaded in paragraph No.8 of the plaint and this amendment, as such, cannot be refused, solely on account of application having filed, after a long period of filing of the suit. Learned counsel for the respondents-plaintiffs has placed reliance upon *Harbinder Kaur and others vs. Harjinder Singh Sandha and others*, 2017(5) RCR (Civil) 34, *Sampath Kumar vs. Ayyakannu and another*, 2002(4) RCR (Civil) 566, *Smt. Bhagwanti Devi and others vs. Mat Ram (Dead) through*

LRs, 2003(3) RCR (Civil) 100, Zora Singh and others vs. Dharam Singh @ Leela, 2018(4) PLR 15 and Md. Yusuf & Ors. vs. Kirpa Shankar Jaiswal and Ors., 2010(66) RCR (Civil) 548.

Before proceeding further, it is essential to make reference to the decision rendered by the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2023(1) RCR (Civil) 851*, wherein, the law relating to the amendment of pleadings was summed up in eleven points and specifically, few of the relevant points, for allowing the amendment, are as follows:-

“.....

All amendments are to be allowed;

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

(ii) where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision.

(iii) The amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint;”

Further, it was also observed that where 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.**

In the light of the aforesaid dictum, the amendment can be allowed at any stage, but for the good grounds, spelt out for the same. The reading of the plaint, copy where of is placed on record as Annexure A-1 and the amendment, as sought, do not establish that if the proposed amendment is allowed, there would be any change in the nature of the suit.

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In this regard, it is essential to take note that in paragraph No.8 of the plaint already filed, it has been specifically mentioned that the plaintiffs are entitled to declaration that they are owners of the land, by virtue of the purchases made by them, vide sale deeds, referred above (in the plaint) and the sale deeds are liable to be entered in the revenue record, by way of correction, in the register of mutation.

It is pertinent to mention that even though, declaration has been sought in the body of the plaint, but however, it was not mentioned in the head-note as well as prayer clause of the plaint.

There is no dispute with the proposition of law that the procedural law is handmaid to the administration of justice. The party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. Even though, it may be at belated that the amendment has been sought, it matters not much, as the proposed amendment is more or less of clarificatory nature.

Though, it is submitted that it is setting up of time barred claim, but however, the plea with regard to the declaration, has already been set up in paragraph No.8 of the plaint. The proposed amendment, now made, is to make addition with regard to the declaration, so sought, in the head-note and prayer clause of the plaint. More or less, it is of a clarificatory nature.

In the given circumstances, it cannot be held that it is time barred claim, now put forth, by the contesting respondents-plaintiffs.

Consequently, learned Court below had right so allowed the amendment, subject to payment of costs.

In view of above discussion, the impugned order calls for no

interference. Hence, there is no merit in both the revision petitions and the same are hereby dismissed.

September 05, 2023
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE

Yes
Yes/No