

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CR-8829-2017 (O&M)

Municipal Council, Derabassi
...Petitioner

VERSUS

Sukhvir Singh
...Respondent

(ii) CR-8830-2017 (O&M)

Municipal Council, Derabassi
...Petitioner

VERSUS

Mandeep Singh
...Respondent

(iii) CR-8831-2017 (O&M)

Municipal Council, Derabassi
...Petitioner

VERSUS

Tara Singh through LRs
...Respondent

(iv) CR-8832-2017 (O&M)

Municipal Council, Derabassi
...Petitioner

VERSUS

Charanjit Singh alias Charan Singh
...Respondent

Date of Decision: November 08, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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Present: Mr.G.S.Attariwala, Senior Advocate with
Mr.Saurabh Singh, Advocate
for the petitioner.

Mr.Kanwaljit Singh Derabassi, Advocate
for the respondents (in CRs No.8829, 8831 and 8832-2017).

Mr.Pawan Kumar Sharma, Advocate
for the respondent (in CR-8830-2017).

ARCHANA PURI, J.

These four revision petitions, the particulars whereof, have been detailed aforesaid, have been filed to challenge the orders dated 09.09.2017, passed respectively, in the separate suits filed by the respondents-plaintiffs.

At the very outset, it is pertinent to mention that respondents-plaintiffs have filed respective suits for issuance of permanent injunction, to restrain defendant-Municipal Council, Derabassi (present petitioner) from dispossessing them forcibly from the Bara, the detail whereof, has been given, in the respective complaints with the boundaries described and the same are situated in the abadi of Village Devi Nagar, Tehsil Derabassi, District SAS Nagar.

Since, various suits filed by the respondents-plaintiffs, are of identical nature, for the purposes of revision petitions in hand, the facts as culled out from the paperbook of CR-8829-2017 are being noticed.

The copy of the complaint is Annexure P-2. It is evident from the same that Sukhvinder Singh (complainant) had filed the suit for issuance of permanent injunction to restrain the defendant from interfering in his peaceful possession or dispossessing him forcibly from the Bara, as detailed

in the headnote of the plaint. In the same, it is asserted by the respondent-plaintiff that there is ancestral house and Bara in question, is in possession of the plaintiff. Now, they have threat, at the instance of defendant-Municipal Council, Derabassi, thereby, interfering into their possession or making an attempt to dispossess them from the suit property.

In pursuance of the notice issued, written statement was filed, thereby, taking preliminary objections, disputing the maintainability of the suit in the present form and also challenged the *locus standi* of the plaintiffs to file the suit and that the plaintiff is precluded from filing the present suit. On merits, it was asserted that plaintiff is in illegal possession of the suit property and that Municipal Council, Derabassi, is the owner of the suit property as municipal limits of Derabassi have been extended and village Devi Nagar falls in the municipal limits of Derabassi. As such, a prayer was made for dismissal of the suit.

When the case was at the stage of recording of the defendant evidence, the petitioner, who was the sole defendant before learned Court below had filed an application under Order 6 Rule 17 CPC, thereby, seeking amendment of the written statement, whereby, proposed amendment was intended to be made, which has been reproduced in paragraph No.7 of the application. The gist of the same is to assert about the plaintiff to be not in possession of the suit property and to assert about the Municipal Council, Derabassi to have become owner in possession of the properties, owned and possessed by Gram Panchayat of village Devi Nagar and also intended to assert about the detail of the previous litigation regarding the suit property.

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Also, the petitioner-defendant wanted to delete paragraph No.2 of their earlier written statement, in which, it was stated that plaintiff is in illegal possession over the suit land, which vests in Municipal Council, Derabassi.

However, in reply, the respondent-plaintiff resisted the claim of the petitioner-defendant. In fact, much emphasis, in the reply, was on the ground that in the previous written statement, the possession of the plaintiff has already been admitted.

After hearing learned counsel for the parties, vide impugned orders dated 09.09.2017, the applications for amendment of the written statement were dismissed.

Feeling aggrieved by the impugned orders, Municipal Council, Derabassi filed the aforesaid revision petitions to challenge four different orders, passed in the respective suits of the respondents.

Learned counsel for the parties heard.

At the very outset, learned counsel for the petitioner-defendant has submitted that learned Court below has erroneously dismissed the application for amendment of the written statement. It is submitted that a prayer for amendment of the written statement, stands on different footing, as compared to prayer made for amendment of the plaint. Furthermore, it is submitted that even though, inconsistent pleas in the written statement are to be made, the same ought to be allowed, as parameters for dealing with the amendment of the written statement are different. Rather, it is submitted that it was only on account of lack of information passed on to the counsel, that

there is certain omission of material facts. In fact, it is submitted that Municipal Council, Derabassi, is the owner in possession of the suit property. Thus, a prayer has been made for acceptance of the revision petitions.

On the contrary, learned counsel for the respondents-plaintiffs has assiduously resisted the claim of the petitioner for amendment of the written statement.

At the very outset, 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:-

- if the amendment is required for effective and proper adjudication of the controversy between the parties;
- where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed;
- Amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint;
- 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.

While making submissions, learned counsel for the petitioner has submitted that a prayer for amendment of the written statement stands on different footing, as compared to a prayer made for amendment of the plaint. It is submitted that general principle that amendment of the pleadings cannot be allowed, as so to alter materially or substitute cause of action or the nature of the claim applies to amendments of the plaint. In fact, vis-a-vis amendment of the written statement, even a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement, should not be objectionable. To so substantiate his submission, learned counsel for the petitioner has relied upon *Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others, 2007(2) RCR (Civil) 830*.

However, on the other land, learned counsel for the respondents-plaintiffs has mainly relied upon two judgments passed by the Hon'ble Supreme Court, firstly, on *M/s Modi Spinning and Weaving Mills Co. Ltd. and another vs. M/s Ladha Ram and Co., 1976 (4) SCC 320*, to emphasize that inconsistent pleas, as such, cannot be allowed to be made, by virtue of amendment, so as to displace the plaintiff completely from the admissions made by the defendants in the written statement. In fact, it is submitted that if the amendment is sought by the petitioner is allowed, the same shall prejudice being denying the opportunity of extracting the admission from the defendants. In this regard, secondly, also reference has

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been made to *Ram Niranjana Kajaria vs. Sheo Prakash Kajaria and others, 2015(4) RCR (Civil) 580*, to submit that a party cannot be permitted to wholly withdraw the admission in the pleadings and that it can only be allowed for the purposes of explaining admission or for the clarification of the admission.

Adverting to the case in hand, it should be noticed that it is suit for permanent injunction, filed at the instance the respective plaintiffs from restraining the defendant from interfering in the peaceful possession of the plaintiffs over the suit property or dispossessing them forcibly from the same and description of the suit property, is made by the boundaries in the respective plaints. However, it is essential to note that in the written statement, so filed, the petitioner-defendant has categorically admitted about the respondents-plaintiffs to be in illegal possession of the suit property. It was only at the stage of recording of the defendant evidence that application in question, has been filed for seeking amendment has been filed.

No doubt, delay in itself may not be crucial on an application for amendment in the written statement, be it for introduction of new fact or for explanation or clarification of an admission or for taking alternative position, but however, the nature and character of the amendment and other circumstances, ought to be taken into consideration, while considering the aspect of delay and its consequence on the application for amendment. It has been categorically observed by the Hon'ble Supreme Court in the *Life Insurance Corporation's case (supra)* that the opposite cannot be divested of an advantage, which it had secured, as a result of an admission by the party

seeking amendment.

In the case in hand, at first instance, it is categoric claim set up in the written statement, at the behest of the petitioner-defendant about the respondents-plaintiffs to be in possession of the suit property, though, it is submitted to be illegal. Now, by virtue of proposed amendment, the petitioner-defendant intends to take a somersault and deny about the possession of the respondents-plaintiffs over the suit property and thereafter, assert itself to be owner in possession of the suit property. This withdrawal of the admission, definitely, shall be causing prejudice to the rights of the respondents-plaintiffs, which had accrued by virtue of admission of possession, as such, admitted earlier in the written statement.

So far as, giving of the details of the previous litigation regarding the suit property is concerned, the petitioner-defendant can very well avail the opportunity of leading evidence, as observed in the impugned order.

In the light of the aforesaid observations, learned Court below has rightly dismissed the applications for amendment of the written statements. Hence, the impugned orders does not call for interference by way of present revision petitions.

Resultantly, all the aforesaid revision petitions, stand dismissed.

November 08, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No