IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113 **CR No.885 of 2023 (O&M)**

Date of decision: 14.02.2023

Baldev Singh (deceased) through his LRs ....Petitioners

V/s

Darshan Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Surjit Singh Salar, Advocate, for the petitioners.

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VIKAS SURI, J. (Oral)

CM-2704-CII-2023

This is an application under Order 6 Rule 17 CPC, seeking amendment in the head note of the revision petition.

For the reasons given in the application, which is supported by affidavit, the same is allowed. The amended petition is taken on record.

Office to append the same at the appropriate place and re-arrange the paper-book.

CM stands disposed of.

CR-885-2023

This petition has been filed under Article 227 of the Constitution of India, whereby challenge raised is to the order dated 20.01.2023 (Annexure P-5) passed in the first appeal, vide which the application under Order 6 Rule 17 CPC, seeking amendment of the plaint has been dismissed.

Shorn of unnecessary details, the facts leading to the present petition are that the plaintiff-appellant-petitioner had filed the suit for declaration to the effect that he is owner and in joint possession to the extent of shares mentioned in the head note of the suit; and for declaration that the sale deed Nos.3288 and 3289 dated 29.02.2012, allegedly executed by defendant No.1 in favour of defendant Nos.2 and 3, was illegal, null and void and has no effect on the rights of the plaintiff and for injunction restraining defendant Nos.2 and 3 from interfering in the peaceful and exclusive possession of the plaintiff.

It is pleaded that the suit land originally was owned by Gujjar Singh son of Heera Singh, measuring 38 *bighas*, 2 *biswas* and ½ share in land measuring 50 *bighas*, 17 *biswas* as per *Jamabandi* for the year 1988-89. After the death of Gujjar Singh, the suit property was inherited by 7 persons, i.e. the widow, three sons and three daughters of Gujjar Singh. Thus, each legal heir inherited 1/7th share of the total holding of Gujjar Singh.

It is pleaded that the shares of the co-sharers were rightly recorded in the *jamabandi* for the year 1988-1989 and subsequently wrong entries have been recorded in the subsequent *jamabandi* for the year 1993-1994. Accordingly, the shares of all the co-sharers were sought to be corrected.

Upon notice, the contesting defendants appeared and remaining defendants were proceeded against *ex parte*. The contesting defendants have resisted the suit on facts as well as the preliminary objections that the suit is not maintainable. No cause of action has arisen to the plaintiff to file the suit and that the same was beyond the period of limitation.

A specific stand was taken by the defendants that the plaintiff was required to prove the shares as alleged by him and that all the revenue entries are correctly mentioned. Ten separate sets of written statements by different defendants were filed. In each of the pleadings by the defendants, the averments made in the plaint were denied and the suit was resisted. The issues were framed and the parties led their evidence.

With regard to the respective shares, the trial Court after discussing the evidence available on record, held as under:-

> "…There were seven legal heirs of the estate of Gujjar Singh including, his three sons, three daughters and his widow. Each of them inherited to the extent of 1/7th share of deceased Gujjar Singh. The same has also been mentioned in the Jamabandi for the year 1988-89 Ex.P23 as alleged by the plaintiff. But in the subsequent Jamabandi for the year 1993-94, the plaintiff alleged that due to the wrong entries of revenue record in the said Jamabandi and the shares of the co-sharers has been incorrectly mentioned in the said Jamabandi Ex.P24 and thereafter, the Jamabandi 1998-99 Ex.P25, 2003-04 Ex.P26, 2008-09 Ex.P27 based upon the said wrong entries. To prove the correct share of each of the co-sharer, the plaintiff relied upon the report submitted by PW-2 Roop Singh Patwari as Ex.P1 and Ex.P2. The said Patwari deposed that after going through the revenue record, he has submitted his report, but in his cross-examination, he admitted that the Tehsildar after going through the "fard Jamabandi" executed the sale deeds. He further admitted that the mutation No.6200, 6201 and 6236 entered in the revenue record are correct. He also submitted his report before the SDM Sangrur with regard to the same and mentioned about the shares of parties in that report. He cannot remember whether mutation was sanctioned on the basis of that report submitted by him. He is unable to produce the said report. If the mutations had been sanctioned on the basis of his report, then his report cannot be relied in the present case. He also admitted that as per jamabandi 2008-2009, the share of defendant No.1, 4, 5 and 33 figured in the revenue record. He also stated that he does not know whether mutation No.6200, 6201 and 6236 are correct or not, then again said that the above said mutations were correctly sanctioned in the year 2008-2009. The

sale deeds executed by defendants No.2, 3 and 34. Similarly, PW-2 Baldev Singh also admitted that he inherited the share of land measuring 29 bighas out of two tuck's. The land of 14 bighas out of talley wala khet and 14 bighas from the tuck of Tokhe Thede Wala. Gurjant Singh, Leela Singh and Gurmail Singh also received the land from both the tuck's and they also received 29 bighas of land. He als deposed that the land sold by DArshan Singh, Gurmail Singh, Gurdev Singh and Leela Singh to Maghar Singh and Harbans Singh or Jarnail Singh has been sold on the basis of wrong jamabandi. He has not alleged about the said jamabandi vide which they have purchased the suit land. Moreover, the report on the basis of which the plaintiff alleges that the jamabandi's are liable to be correct is itself contradictory. PW-1 Roop Singh Patwari himself is not sure about the shares of the parties in his report and he does not know whether mutation No.6200, 6201 and 6236 are correct or not. On the same time, he also admitted that the sale deed executed by defendant No.1, 4, 5 and 33 in favour of defendants No.2, 3 and 34 are correct as per Jamabandi 2008-09, whereas the plaintiff himself denied the said fact. Even the plaintiff has not proved the mortgage deed executed by the co-sharer in favour of other person out of their shares, neither the sale deeds alleged by him has been proved on record to determine their share. Moreover, PW-1 Roop Singh Patwari Halqa has not been appointed by the Court to give his report Ex.P1 and Ex.P2. Neither any application has been filed to engage him nor the necessary sanction was obtained from the Court by the plaintiff. The official like Halqa Patwari cannot verify the correctness of the jamabandi without the proper approval of his higher authorities. Mere by filing a report which is contradictory is not sufficient to correct the jambandi by the civil Court. Hence, the contentions of the plaintiff are not seems to be genuine and trustworthy.

26. Apart from that the plaintiff has not proved the latest pre-degree table of all the co sharers of the disputes land. Neither the plaintiff has array all the co-sharer as party inspite of the knowledge, to get corrected their share in jamabandi. He has

> not elaborate the share of each of the co sharer, neither he has explained how much land they have already sold and what share has been left with them, on the basis of incorrect entries made by the Revenue Authorities. The plaintiff also remain failed to prove the correct and accurate position of the share of each of the co sharer. Moreover, PW-1 Roop Singh Patwari has been examined by the plaintiff at his own, on the basis of his report Ex.P1 and Ex.P2 without explaining the share sold by the co-sharer. However, keeping in view the above-said facts, it is difficult for the court to correct the jamabandi's. Moreover, the mutations Ex.P3 to Ex.P18 has already been sanctioned and the plaintiff remained fail to prove the fact that the said mutations were sanctioned wrongly by the revenue authorities, by leading cogent and convincing evidence. The mutation of inheritance through Mohinder Kaur wife of Kehar Singh has already been sanctioned in favour of Rajinder Kaur wife of Sukhcharan Singh in the jamabandi 1993-94 at point XI of Ex.P24. The plaintiff could not explain that how each and every mutation or the sale deeds are illegal and unlawful by leading effective evidence. Hence, it is difficult to rely upon the assertions of the plaintiff."

With regard to the contention of limitation to file the present suit, it was observed that the suit for declaration seeking relief of correction of the revenue entries in the *jamabandi* had been filed after 22 years and as per Section 45 of the Punjab Land Revenue Act, 1887, no period of limitation has been prescribed for seeking such relief. The suit was dismissed with the following observations:-

> "29. Resultantly, from the above said detailed discussion, the plaintiff failed to prove his case. As such, the suit of the plaintiff is hereby dismissed with no order as to cost. However, the ownership of the co-sharer on the basis of their inheritance cannot be denied, only up to their share. Every co-sharer is at the liberty to approach the civil court of competent jurisdiction for correction of Jamabandi after evaluate their exact

> shares, as per rules. Decree sheet be prepare accordingly and file complete in all respect be consigned to the Record Room."

A perusal of the above would show that as far as the plaintiff-applicant is concerned, the plaintiff failed to prove the shares alleged by him, but nonetheless the revenue officials were also not in a position to explain the respective shares. The trial Court granted liberty to every co-sharer to approach the civil Court of competent jurisdiction for correction of *jamabandi* after they evaluate their exact shares, as per rules.

Aggrieved against the judgment and decree dated 23.02.2017, the plaintiff-petitioner preferred first appeal, which was registered as Civil Appeal No.136 of 16.03.2017.

In the said appeal, on 31.08.2022, i.e. after more than five years of the institution, the petitioner moved an application under Order 6 Rule 17 seeking amendment of the plaint (Annexure P-2).

It was pleaded in the said application that at the time of institution of the suit due to technical defects of the shares, the plaintiff could not correctly mention the same in the plaint regarding his share and the shares of the defendants. The plaintiff has now got the entire revenue record from 1988-1989 to 2008-2009 compared, calculated the ownership of each co-sharer and area sold by each co-sharer and the correct share, which was being given in a tabulated form in the said application. In view of the same, the plaintiff-petitioner sought amendment with regard to description of respective shares of all the co-sharers.

It is not disputed that the aforesaid application was opposed by the contesting respondents by filing reply, but the said reply has not been appended with the present revision petition.

The first appellate Court after noticing the rival contentions of the parties, dismissed the application on the ground that the plaintiff-petitioner had been non-suited by the trial Court *inter alia* on the ground that he had not mentioned the correct shares while liberty was granted to every co-sharer to get their shares corrected after calculating the same. It was noticed that the appeal was preferred in the year 2017, whereas the application seeking amendment of the plaint has been filed in 2022, despite the fact that the plaintiff-petitioner had knowledge that wrong shares were mentioned in the plaint. It was concluded that if the application seeking amendment would be allowed at such belated stage, it would result in a *de novo* trial. The appellate Court also observed that the plaintiff-appellant had not exercised due diligence and relied on the decision of a coordinate Bench of this Court, wherein amendment was disallowed even where the pleadings sought to be introduced by way of amendment was on the ground that it was due to inadvertence on the part of counsel and the typist concerned.

Heard learned counsel for the petitioner and with his able assistance perused the documents on record.

It is conceded that that plaintiff-petitioner was non-suited by the trial Court as he did not mention the correct shares of the litigating parties and the said finding has been impugned by way of the first appeal instituted on 16.05.2017. The plaintiff-appellant-petitioner was thus, fully aware of the weakness in the case set up by him and had also summoned the revenue officials and relevant record as plaintiff's evidence. Thus, it is patent on record that the correct/incorrect shares were to the notice of the petitioner from day one of the institution of the present suit. The application seeking amendment was not only made at the appellate stage but that too after 5 years of the institution of the said appeal.

The provisions of Order 6 Rule 17 CPC read as thus:-

> "17. **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 perusal of the proviso to Rule 17 of Order 6, Code of Civil Procedure, 1908, would show that after the issues have been framed, i.e. the trial has commenced, the applicant seeking amendment to the plaint has to establish a jurisdictional fact before power under the said provision can be exercised in his favour.

In ***Vidyabai and others vs. Padmalatha and another*****, (2009) 2 SCC 409**, the Apex Court after examining the provisions of Order 6 Rule 17 CPC, as re-introduced by the amendment of 2002, held that the said provision is couched in a mandatory form and unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the pleadings. It was further held that the Courts jurisdiction to allow such an application seeking amendment of pleadings is taken away unless the conditions precedents therefore are satisfied that the Court has to come to a conclusion that in spite of due diligence the party seeking amendment could not have raised the matter before commencement of the trial. The relevant portion of the judgment reads as under:-

> "19. It is the primal duty of the court to decide as to

> whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

In the case in hand, the facts and circumstances demonstrate that the petitioner was aware and had access to the revenue record during the trial and even after having been non-suited by the trial Court, no steps were taken by him within a reasonable period. However, as the jurisdictional fact required to be established in terms of the proviso to Rule 17 (supra) is not made out in the present case, the application seeking amendment could not have succeeded.

Keeping in view the aforesaid discussion, I do not find any illegality or infirmity in the order dismissing the application seeking amendment of the plaint.

Consequently, there being no merit in the present revision petition, the same is dismissed.

(VIKAS SURI)
JUDGE

February 14, 2023
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Whether speaking/reasoned: Yes
Whether reportable: No