

2023:PHHC:119221

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-1007-2021 (O&M)

Reserved on : 29.08.2023
Pronounced on : 12.09.2023

BirenderPetitioner

Versus

Chanchal and anotherRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by : Mr. Nitin Sansanwal, Advocate for
Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Bhisham Kumar Majoka, Advocate
for respondent No.1.

NAMIT KUMAR, J.

1. The instant revision petition has been filed by the petitioner under Article 227 of the Constitution of India seeking quashing of order dated 24.03.2021 (Annexure P-5) passed by learned Civil Judge (Junior Division), Faridabad whereby the application filed by respondent No.1/plaintiff under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint has been allowed subject to cost of Rs.2,000/- to be paid to the opposite party.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that respondent No.1/plaintiff-Chanchal (minor) by projecting herself to be the constituent/coparcener of the joint Hindu Family under the kartaship of the respondent No.2/defendant No.1, for being the biological daughter of late Sh.Mohar

Pal and grand daughter of respondent No.2/defendant No.1, has invoked for the declarative decree for declaring her to be the conjoint owner in possession with the defendants (petitioner and respondent No.2 herein) to the tune of 16/7 share in the suit scheduled property and as an axillary prayer has beseeched for the decree of perpetual injunction by injunctioning the defendants from alienating the suit estate to any individual. The said suit was opposed by the defendants (petitioner and respondent No.2 herein) by filing a detailed written statement on 06.02.2017 in which it had clearly been disclosed that the suit land already stand relinquished by respondent No.2/defendant No.1-Rambir in favour of petitioner-Birender. After framing of the issues, the plaintiff's evidence was closed on 17.02.2020 and the rebuttal evidence was closed on 17.03.2021. Thereafter, an application under Order 6 Rule 17 read with Section 151 of CPC was filed on 17.03.2020 by respondent No.1/plaintiff seeking the following amendment :-

“The the relinquishment deed as pleaded in the written statement by the defendant No.2 bearing No.9629 dated 25.11.2014 is invalid in law, bogus, sham and inoperative against the right, title, interest of the plaintiff in the suit land and may kindly be held to be invalid and null and void and be set aside.”

on the ground that in the written statement filed by petitioner/defendant No.2, he had set up relinquishment deed dated 25.11.2014 alleging that respondent No.2/defendant No.1 transferred the entire 1/6th HUF share in favour of petitioner/defendant No.2 and the previous counsel had not filed any replication to the said written statement and during evidence, respondent No.1/plaintiff had contested and challenged the

CR-1007-2021 (O&M)

relinquishment deed dated 25.11.2014 said to be executed by respondent No.2/defendant No.1 in favour of petitioner/defendant No.2. The said application contested by petitioner/defendant No.2 by filing a detailed reply dated 02.03.2021. The said application having been allowed by the Court of learned Civil Judge (Junior Division), Faridabad vide order dated 24.03.2021, the instant revision petition has been preferred by petitioner/defendant No.2.

3. Learned counsel for the petitioner submits that the proposed amendment has been sought by respondent No.1/plaintiff in view of the stand taken in the written statement which was filed way back on 06.02.2017 and the application for amendment was filed after a period of more than 03 years i.e. on 17.03.2020 and that too when the case was at the stage of rebuttal evidence and for arguments. He has relied upon to proviso 2 Order 6 Rule 17 which provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. He submits that nothing has been stated in the application seeking amendment as to how inspite of due diligence, respondent No.1/plaintiff has not been able to seek amendment of the plaint before the commencement of the trial as the written statement was filed way back on 06.02.2017. He further submits that by seeking amendment, respondent No.1/plaintiff is challenging the relinquishment deed dated 25.11.2014. He further submits that the limitation for filing suit for challenging the relinquishment deed is 03 years in terms of

Section 59 of the Limitation Act, 1963 and since on the date of filing of the application for seeking amendment, the period of 03 years had already elapsed, therefore, in terms of the law laid down by the Hon'ble Supreme Court in case of ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & others : 2010 (1) RCR (Civil) 27***, the application seeking amendment in plaint could not be allowed.

4. Per contra, learned counsel for respondent No.1/plaintiff submits that the application for amendment could not be filed earlier as the earlier counsel had not filed the replication to the written statement filed by the defendants on 06.02.2017 and never advised respondent No.1/plaintiff to seek amendment of the plaint. He submits that the impugned order passed by learned Trial Court allowing the application for amendment of the plaint is perfectly legal and valid and is liable to be upheld by this Court. In support of his contention, learned counsel for respondent No.1/plaintiff has placed reliance upon the judgments of Hon'ble Supreme Court passed in ***Ganesh Prasad Vs. Rejeshwar Prasad and others : 2023(2) RCR (Civil) 404*** and ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and others : 2018(1) RCR (Civil) 501*** and judgment passed by this Court in ***Nishan Singh Vs. Ajit Singh and others : 2023(1) Law Herald 5***.

5. I have heard learned counsel for the parties and perused the relevant record.

7. Order 6 Rule 17 of CPC reads 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.”

8. The Hon’ble Supreme Court in its judgment passed in ***Revajeetu Builders & Developers’s case (Supra)***, after considering various earlier judgments, has held as under :-

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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.***

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. *The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.*

70. *We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. ”*

9. Applying the above-said judgment to the facts of the present case, it is clear that by way of amendment, respondent No.1/plaintiff wanted to challenge the relinquishment deed dated 25.11.2014 for which the limitation is 03 years in terms of Section 59 of the Limitation Act, 1963 and the present case would fall in sub para 6 of para 67 of the above-said judgment wherein it has been held that as a general rule, the Court should decline amendment if a fresh suit on the amended claim would be barred by limitation on the date of application. Therefore, in this view of the matter, the impugned order dated 24.03.2021 cannot be sustained and is liable to be set aside.

10. The judgments cited by learned counsel for respondent No.1/plaintiff are not applicable to the facts and circumstances of the present case.

11. Consequently, the present petition is allowed and the impugned order dated 24.03.2021 passed by learned Civil Judge (Junior Division) Faridabad is hereby set aside. Interim order dated 29.04.2021 shall stand vacated.

12.09.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No