

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 3340 of 2023

Pronounced On : December 18, 2023

Manoj Kumar Sharma and others Petitioners
vs.

Manju Kaushik and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ashok Aggarwal, Senior Advocate
with Mr. Himanshu Arora, Advocate
and Mr. Mukul Gupta, Advocate
for the petitioners.

Mr. Amit Jain, Senior Advocate
with Mr. Aryaman Thakur, Advocate
and Mr. Anupam Mathur, Advocate
for respondents no.1 and 3.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 19.11.2022 (wrongly mentioned as 15.10.2022) (Annexure P-1), passed by learned Civil Judge (Junior Division), Gurugram (for brevity – Trial Court), whereby application moved by the petitioners/defendants no.4, 6 and 7 (hereinafter referred to as – the defendants), seeking amendment of written statement, has been dismissed.

2. The brief facts of the case are that plaintiffs/respondents no.1 to 3 (hereinafter referred to as – the plaintiffs) filed a suit for declaration and partition against the defendants, seeking consequential relief of permanent injunction *inter alia* on the ground that the suit property was ancestral property in the hands of their father late Shri Ravi Dutt Sharma, when he

inherited the same from his father late Shri Ram Chander Bhardwaj and plaintiffs have co-parcenary rights in the suit property. The plaintiffs have $1/8^{\text{th}}$ share each i.e. $3/8^{\text{th}}$ share in the suit property. The decree dated 10.06.1983 and mutation in the revenue record, pursuant to the said decree, are illegal, null and void and not binding upon the plaintiffs as the said decree was result of fraud. The sons of late Shri Ravi Dutt Sharma did not acquire any land during life time of Shri Ravi Dutt Sharma on the basis of said decree, which was never acted upon.

3. The defendants contested the suit, filed written statement and submitted that the plaintiffs have no right in the ancestral property and they were not co-parceners, when Shri Ravi Dutt Sharma died in the year 1966. Shri Ravi Dutt Sharma, in the family settlement, made all his five sons as joint owners of the suit property and said family settlement was confirmed in the judgment and decree dated 10.06.1983, passed by the competent Court. Since Shri Ravi Dutt Sharma died prior to the year 2005, the plaintiffs being daughters, could not have become the co-parceners in the suit property.

4. The written statement was originally filed on 29.04.2014. Thereafter, the plaintiffs sought amendment of the plaint, which was allowed vide order dated 17.10.2016. The defendants made the statement that written statement originally filed by them be read as amended written statement. Later, defendants moved application dated 08.04.2021, seeking amendment of their written statement. Plaintiffs contested the application and filed reply to the application. However, the said application was dismissed vide impugned order dated 19.11.2022.

5. Learned senior counsel appearing for the defendants has

submitted that Civil Suit(OS) No.110 of 2021 by Baby Aranyee Sharma against defendants and others was filed and is pending in the Hon'ble High Court of Delhi for partition and other reliefs. The suit property of this case is also subject matter of that suit. While preparing written statement for filing in that suit, when her uncle Keshav Dutt Sharma was searching the documents, he found registered Will dated 27.04.1966, executed by late Shri Ram Chander Bhardwaj in favour of his three sons namely Ravi Dutt Sharma, Vishnu Dutt Sharma and Keshav Dutt Sharma. As a result of consultation with senior Advocates, it came to their knowledge that the suit property in question was never ancestral property in the hands of late Shri Ravi Dutt Sharma or the defendants. The written statement filed in the instant case was due to lack of understanding of Hindu Law and because of some communication gap between the counsel concerned and the defendants resulting in an incorrect opinion provided to the defendants. They could not take the plea that late Shri Ram Chander Bhardwaj, during his lifetime, was the sole and absolute owner of the suit property, having purchased the same from his own funds. He had left behind registered Will dated 27.04.1966. The property, which came in the hands of his sons, was self-acquired property. There was an oral family partition between said three sons, pursuant to which Late Shri Ravi Dutt Sharma became owner of the suit property.

6. It is further argued that Court can allow any party to amend the pleadings at any stage of proceedings for the purpose of determining real controversy between the parties if the prayer is bona fide one and there is no serious injustice or irreparable loss caused to the other side. There cannot be

any doubt about Will dated 27.04.1966, which is registered document. The said Will was not in the knowledge of defendants earlier. So, there was no reason to produce the same earlier. The production and proving of Will executed by late Shri Ram Chander Bhardwaj is essential and necessary document. It is further argued that purpose of allowing amendment is to minimize the litigation and for promoting the ends of justice. The proposed amendment is necessary for just decision of the case. The learned senior counsel for the defendants has relied upon judgments of Hon'ble Supreme Court in Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported as 2022 AIR (Supreme Court) 4256 and in Baldev Singh and others vs. Manohar Singh and another reported as (2006) 6 Supreme Court Cases 498. Learned counsel has also relied upon judgments passed by this Court in Aadish Aggarwal vs. Brijeshwar Swaroop reported as 2018 (2) Law Herald 1822 and in Sagar Singh Slathia vs. Surinder Pal Singh reported as 2009(3) R.C.R.(Civil) 37.

7. Learned counsel for the plaintiffs has argued that trial of the case has already commenced. The issues have been framed on 15.02.2017 and the case was listed for evidence on 06.03.2017. Thereafter, number of witnesses have been examined by the plaintiffs. It is further argued that the application has been moved after many years of filing of written statement. The defendants now want to withdraw the admission, which has already been made by them that the suit property is ancestral. There had been several rounds of litigation between the parties and plea of the alleged Will has never been taken by the defendants. Reliance in support of the aforesaid

contentions has been placed on Pandir Malhari Mahale vs. Monika Pandit Mahale and Ors. reported as 2020(11) SCC 549, Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors. reported as 2007(1) RCR(Civil) 481, Vidyabai & Ors. vs. Padmalatha & Anr. reported as 2009(1) RCR(Civil) 763, Jeet Singh vs. Charanjit Singh and others reported as 2021(2) PLR 292, M/s Batta Provisions Store and others vs. Darbari Lal (died) through his LRs and others reported as 2022(4) RCR(Civil) 193 and Bhagirath @ Bhaga (deceased) thr. LRs vs. Ranjit Singh and others reported as 2022(4) ALL MR 45.

8. I have heard submissions made by learned counsel for the parties and perused the case record.

9. Recently, in the case of Sanjeev Builders (supra), the law of amendment has been summed up 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 pin-pointedly 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)."*

10. In case **Ajendraprasadji N. Pande** (*supra*), the amendment of written statement was disallowed by Hon'ble Apex Court because of the reason that the issues had already been framed, evidence of three witnesses was over and the documentary evidence had already been tendered. In case **Baldev Singh** (*supra*), trial of the case had yet not commenced and it was opined by Hon'ble Supreme Court as under :-

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for

amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.”

11. It is true that before the amendment is allowed, the Court should satisfy itself whether such an amendment is necessary for determining the real controversy between the parties. The Court is required to weigh the prejudice or injustice, which would be caused to the other side. If that party can be compensated with costs, then there is no harm in allowing the amendment but if an irreparable loss is going to be caused to the other side, then such an amendment cannot be allowed. Amendment of a written statement is to be liberally construed than amendment of a plaint. The Court should not refuse bona fide and legitimate amendment and at the same time, it should not allow mala fide or dishonest amendment. If there was suit on intended cause of action but is barred by limitation on the date of filing of application, such amendments should be rejected. If amendment is necessary for just decision of the case in order to do justice between the parties, then such amendment is required to be allowed, even after commencement of the trial, as held in the case of **Baldev Singh (supra)**.

12. Keeping in view the above legal position and applying the same to the case in hand, plaintiffs no.1 to 3 have filed a suit for declaration, partition, with consequential relief of permanent injunction on the ground that plaintiffs and defendants no.1 to 7 are the members of the Hindu Joint Family. Pt. Ram Chander Bhardwaj was owner in possession of the ancestral and coparcenary agricultural land comprised in suit land which is

the property of Joint Hindu Family and the properties are in joint possession of the plaintiffs and defendants no.1 to 7. The properties originally belonged to Pt. Ram Chander Bhardwaj – grand father of plaintiffs. After his death, the properties, mentioned at i) to vii) in para no.3 of the plaint, fell to the share of Shri Ravi Dutt Sharma, as per family settlement. Shri Ravi Dutt Sharma died in the year 1996 leaving behind his eight legal heirs. So, share of all the plaintiffs in all the afore-mentioned properties is 1/8th share. No partition ever took place amongst his legal heirs since he wished that till his wife Smt. Vidya Devi is alive, all the aforesaid properties be kept joint. Smt. Vidya Devi – mother of plaintiffs/respondents no.1 to 3 died in the year 2012. The plaintiffs acquired 1/8th share each in the aforesaid properties i.e. properties of their father. Petitioners/defendants no.4, 6 and 7 filed written statement raising preliminary objection that the suit is barred by limitation and the plaintiffs have no locus standi to file the suit. Shri Ravi Dutt Sharma died in the year 1996. Since that date, daughters have no right in the suit property as they were not coparceners. Shri Ravi Dutt Sharma suffered decree admittedly on 10.06.1983, on the basis of family settlement, arrived at between him and his sons. The plaintiffs had been seeing the sons of Shri Ravi Dutt Sharma as owners in possession of the suit property, who were so recorded in the revenue record, but they never challenged it for more than 30 years. It is denied that the plaintiffs and defendants are members of Joint Hindu Family. Para no.2 of the plaint was replied as matter of record, in which it was written that Pt. Ram Chander Bhardwaj was owner in possession of the properties mentioned in the said para as ancestral and coparcenary agricultural land. Other averments were denied. Defendants

no.4, 6 and 7 moved application dated 08.04.2021 to substitute preliminary objection no.2. The preliminary objection no.2 in the written statement filed on 29.04.2014 is as under :-

“2. That the plaintiffs have no locus standi to file the present suit. Admittedly Shri Ravi Dutt Sharma died in the year 1996. Till that date daughters had no right in the ancestral property, as they were not coparceners. Ravi Dutt suffered the decree admittedly on 10.06.1983 on the basis of family settlement arrived at between him and his sons who constituted a joint Hindu family. Thus, the plaintiffs have no locus standi to challenge the said decree.”

13. Now, defendants no.4, 6 and 7 want to substitute the following preliminary objection no.2 :-

“2. Late Sh. Ram Chandra Bharadwaj was the sole and absolute owner of the entire land at Gurgaon. All his rights in the said land were bequeathed upon his three sons namely Sh. Ravi Dutt, Sh. Vishnu Dutt, and Sh. Keshav Dutt as per his last will and testament dated 27-4-1966. This will was registered in the office of Sub-Registrar as Document 482 Book No. III Volume No. 9 at pages 44 to 46 on 08.09/1966- Sh. Ram Chandra Bharadwaj died on 05.12.1967 and thereafter his 3 sons named above became owner of all his properties including the land at Gurgaon. In the revenue records also the land was mutated/transferred in the name of said 3 persons on the basis of the said registered will. When

property is bequeathed by way of Will by Late Sh. Ram Chander to his sons, it became self acquired property in the hands of his said three sons and it is so mentioned in the Will also.

There was an oral partition amongst the three sons of Late Sh. Ram Chander on 05.12.1978 to separate 1/3'd share of each of them pursuant to which Sh. Ravi Dutt became owner of the following lands :-

- i. Agricultural land measuring 108 kanals 19 marlas, Khewat No.147, Khatoni no.200, Rect. No.8, Killa no.6(7-7),7 (8-16 0, 11/2 (1-14), 14(6-0),15(8-0), 16(8-0), 17(8-0), 18(8- 0), 19 (7-18), 20/1 (3-3) 20/2 (0-12), 22/2 (2-15), 23 (7- 18), 24 (8-0), 25(8-0), no.9, Killa no. 15/2/2 (0-3), 16/2 (3-15), Rect no.11, Killa no.3/2 (3-12), 4/1 (4-0), 51/2 (1-6), vide mutation no.579 situated in revenue estate of Village Silokhra, Tehsil and District Gurgaon.*
- ii. 1/3rd share out of total agricultural land measuring 16 Kanals bearing Khewat no.147, Khata no.200, Rect no.11, Killa no. 6(6-5), 7/2/1 (2-3), 8/2 (0-10), 26 (1-12), Rectangle no.12, Killa no.27 (5-10), vide mutation no.578, situated in the revenue estate of village Silokhra, Tehsil and District Gurgaon.*

An oral family settlement took place on 17.05.1980 between the five sons namely Sh. Vinod Kumar, Sh.

Pramod Kumar, Sh. Subodh Kumar, Sh. Amod Kumar and Sh. Manoj Kumar and their father Sh. Ravi Dutt pursuant to which all the five sons became joint owners of the entire land which had earlier fallen to the share of Late Sh. Ravi Dutt. In the said oral family settlement, no right in the said land was retained by Sh. Ravi Dutt.

Part of this land was acquired and proceedings for compensation and enhancement were Initiated by Sh. Ravi Dutt and by his said five sons. The remaining land was proposed for acquisition and a notification under Sec.4 of The Land Acquisition Act was issued. This proposed acquisition was challenged by the said five brothers and as per judgment dated 27.01.2011 writ petition no.6081/1963, notification was quashed and the land continued to belong and owned by these five brothers.

A suit for Declaration was also filed by the five sons against their father Sh. Ravi Dutt to declare that after the family settlement held about three years back Sh. Ravi Dutt was not left with any right, title or interest in the said land and that it belongs to his five sons only. Sh. Ravi Dutt appeared in the said suit and admitted the claim of his five sons pursuant to which a judgment and decree dated 10.06.1993 was passed by Sh. R.S. Behmani, Sub-Judge, IIInd Class, Gurgaon in suit no. 377/1983 titled as Sh. Vinod Kumar and Ors. Versus Sh Ravi Dutt. As such, the said property has always remained self acquired property in the

hands of these five persons. There has been no partition of the said properties amongst these five persons till date. By no stretch of imagination, the said land ever became ancestral or HUF property.

After passing of the Hindu Succession Act and particularly Sec. 8 of the said Act, Inheritance of even the ancestral properties does not result in creation of an HUF or ancestral property. Such Inheritance is as self acquired property in the hands of the successor and not as ancestral property even if the succession is with respect to an ancestral property.

A bare perusal of the above confirms that the suit property never became ancestral property and therefore plaintiffs have no right therein.

A collaboration agreement dated 19.01.2012 was entered between defendant no.8 on the one hand and defendant no.1 to 7 and Sh. Keshav Dutt Sharma, on the other hand as per which defendant no.8 has agreed to develop the land of defendant no.1 to 7 and also of Sh. Keshav Dutt Sharma which in all is measuring 12.90 acres (app.) situated in village Silokhera, District Gurgaon, Haryana. The built up superstructure is to be shared in the ratio of 60% by Defendant no.8 and 40% by the remaining parties to the said agreement.

During all this process, none of the other legal

heirs of Late Sh. Ravi Dutt swung into action. When the plaintiffs realized that the land at Gurgaon is being developed and has become valuable, they have become dishonest and started claiming their right in the said land though they were fully aware that in the family settlement Sh. Ravi Dutt had given this land to his five sons only.

In the backdrop of above facts plaintiffs have no right or locus stand to allege and claim that the suit properties are ancestral properties and that they have right therein being coparceners.

Sh. Ramchandra Bharadwaj was sole and absolute owner of the land at Gurgaon. He executed his will dated 27-4-1966 whereby he has bequeathed entire said land to his three sons and excluded other two sons and six daughters from Inheritance. The property stood devolved upon the said three sons as the absolute owners and they have owned and possessed the same as their self acquired property. It is so mentioned in Para 2(c) of his will also wherein he has categorically mentioned and named his three sons as the absolute owners and that they shall own and possess the same as their self acquired property. Thus, the intent was clear to make the land at Gurgaon as the self acquired property in the hands of his three sons and not to make this property as ancestral or HUF.

Later on, an oral family partition took place between the said three sons of Late Sh. Ram Chandra Bharadwaj pursuant to which land at

Gurgaon referred above fell in the ownership of Sh. Ravi Dutt who in an oral family settlement made his five sons as the joint owners which was also confirmed in the Judgment dated 10.06.1983. Thus, at no stage the suit property attained the status of ancestral or HUF property.

The plaintiffs have no locus standi to file the present suit. The succession to the suit land, opened In the year 1996. At that time, under the Hindu Law as it stood, females were not treated as co-parceners and they did not acquire any interest by birth in the same. The females were incompetent under law to challenge alienation of ancestral co-parcenary property made by a Karta. However the suit property at all material times has been the self acquired property earlier in the hands of Late Sh. Ram Chander thereafter Sh. Ravi Dutt thereafter with his three sons and now with defendant no.1 to 7.”

- 14.** The reason for taking the said plea is given in para no.4 of the application which is as under :-

“4. While preparing written statement to be filed in the said suit CS (OS) No.110/2021, various consultations and meetings took place with the Senior Advocates and all of them have rendered legal opinion that the suit property was never ancestral property in the hands of Late Sh. Ravi Dutt Sharma nor with the applicants/defendants. It appears that written statement filled in the present suit was the result of lack of communication between the applicants and their

counsel and it may also be due to lack of understanding of Hindu Law on the part of applicants/defendants and the incorrect legal opinion rendered to them.”

15. The merit of the case is not to be seen at this stage. The defendants, in fact, want to take a stand that Pt.Ram Chandra Bhardwaj died on 05.12.1967 and thereafter, his three sons including Shri Ravi Dutt Sharma became owners of all his properties including the land at Gurgaon. In the revenue record, the land was mutated/transferred in the names of said three persons, on the basis of said registered Will. A copy of registered Will dated 27.04.1966 has also been placed on the file as Annexure P-5.

16. Keeping in view the fact that the rights of the parties depend upon whether the property is ancestral property or not and plaintiffs are required to prove by way of evidence that nature of the property is ancestral by proving the same but if property is devolved upon legal heirs by way of a Will, then it requires consideration whether property is still ancestral or not. So, the petitioners have a right to take the said defence, keeping in view the law laid down in the case of **Sanjeev Builders (supra)** and **Baldev Singh (supra)**. No doubt, by act of the petitioners, the trial of the case has been delayed and the petitioners have moved the application at a belated stage, posing hardship to the plaintiffs but that cannot be considered as a ground to reject the application. The petitioners can be burdened with heavy costs.

17. In the light of the above discussion, this revision petition is allowed. Application for amendment of written statement, moved by the petitioners, is hereby allowed, subject to payment of Rs.75,000/- as costs,

out of which Rs.15,000/- be deposited in the funds of concerned Legal Services Authority and remaining amount be paid to plaintiffs.

18. The revision petition stands allowed in the aforesaid terms. Parties are directed to appear through their counsel before the learned Trial Court on 21.12.2023.

19. Pending applications, if any, shall stand disposed of along with this judgment.

December 18, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.