

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3608 of 2023

**Reserved On: 04.09.2023
Pronounced On: 06.09.2023**

Nachattar Singh and Another

... Petitioner(s)

Versus

Gurdev Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.K.S.Phoolka, Advocate
for the petitioner(s).

Mr. Nipun Bhardwaj, Advocate
for the respondent.

Anil Kshetarpal, J.

1. This is defendants' revision petition against the order passed by the trial Court on 03.05.2023, while dismissing their application for permission to amend the written statement at the initial stage of the suit. It is significant to note that the learned counsel representing the parties are *ad idem* that the trial Court has not culled out the issues arising from the pleading of the parties.

2. The Court of first instance has dismissed the application on the following three grounds:-

- i) The defendants, by way of the amendment, want to resile from their previous statement which amounts to their admission;
- ii) The defendants have entirely changed the course of their

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pleadings; and

iii) The proposed amendment is malafide.

3. In order to comprehend the controversy involved, some facts, in brief, are required to be noticed. The plaintiff (Gurdev Singh) is son of Chet Singh, whereas the defendants (petitioners herein) are the grandsons of Tota Singh. Tota Singh and Chet Singh were the brothers. Gurdev Singh son of Chet Singh filed a suit for the grant of decree of permanent injunction restraining the defendants from interfering in his peaceful possession and dispossessing him from the plot measuring $4\frac{1}{2}$ marlas. It is the case of the plaintiff that on 06.08.1964, Chet Singh and Tota Singh were jointly allotted a plot measuring 9 marlas, situated within the area of lal lakeer of village Lehra Khana, Tehsil and District Bathinda. Tota Singh and Chet Singh remained in continuous possession of the property in an equal share, but subsequently, they partitioned amongst themselves by dividing it into two plots of $4\frac{1}{2}$ marlas each. Chet Singh was allocated a plot on the Western side of the remaining property which had fallen to the share of Tota Singh.

4. The defendants, on the other hand, while contesting the suit, admitted that the plot was allotted in an equal share to Chet Singh and Tota Singh, however, Chet Singh, subsequently relinquished his rights over his share with respect to the plot measuring $4\frac{1}{2}$ marlas in favour of Tota Singh, grandfather of the defendants, therefore, he became owner in possession of the entire plot measuring 9 marlas. When the suit was at the preliminary stage, the defendants filed an application for permission to amend the written statement in order to incorporate the following assertions in para

No.3 of the preliminary objections as well as para No.3 of the reply on

merits.

Legal Objections:-

“1 and 2 XXXX XXXX XXXX XXXX

3. The actual facts are that 0 kanals 09 marlas property within 'lal-lakir' of the village was Muslim property, out of which 4 marlas belongs to one Budha Ghamiar and the same was in possession of Tota Singh (grand-father of defendants) since 1947-48. Similarly, 4½ marlas, which adjoining to the eastern side of the property belongs Singh, belongs to one to Tota Kalu s/o Boria, Muslim was in possession of Chet Singh (father of the plaintiff) as the same was allotted to Chet Singh, father of the plaintiff. certificate Thereafter was joint sale issued by The Tehsildar vide file no. 1074/VI dated 23.8.1964. Lateron, on 5.9.1964, an application was moved by Chet Singh (father of the plaintiff) for issuance of separate Sale Certificate with respect to 4½ marlas allotted to Tota Singh (grand-father of the defendants) and 4 marlas allotted to Chet Singh, father of the plaintiff. Accordingly, separate sale certificate was issued by Sale Tehsildar, Bathinda. Apart from it, 4 marlas property was purchased from one Taro also Muslim by the father of the defendants/ applicants and aunt-Jangir Kaur w/o Jit Singh. In this way, the father defendants/applicants and of aunt namely Jangir Kaur w/o Jit Singh became owner in possession of 09 marlas (i.e. 4 marlas allotted to Tota Singh, grand-father of the defendants and 4 marlas property purchased from said Taro).

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Since then, they remained owners in possession of said 09 marlas. The father of the defendants/ applicants and constructed the aunt-Jangir Kaur, room for also storing the Chalf' (Toori) and also planted the trees of Neem and using the above said property for their personal use as owners thereof. The property i.e. 4 marlas allotted to Chet Singh was in possession of Chet Singh since the date of allotment, which is situated towards the eastern side of the property of the defendants/applicants.

In the year 1999, some dispute arose between the father and aunt of the defendants/ applicants with the plaintiff and his brothers namely Karnail Singh, Jarnail Singh and Boota Singh regarding the use of property measuring 09 marlas owned and possessed by father and aunt of the defendants/applicants. It is not out of place to mention here that the plaintiff is known as Kaka by nick name. Accordingly, father of the defendants namely Mukhtiar Singh and aunt-Jangir Kaur filed a civil suit against the plaintiff and his brothers titled as 'Mukhtiar Singh and another versus Karnail Singh & others'. Copy of the plaint of the said suit is enclosed herewith for the kind perusal of this Hon'ble court. After the filing of the said civil suit, compromise was effected between (father of the Mukhtiar Singh defendants/applicants), aunt-Jangir Kaur with Karnail Singh & others, in the presence of respectable and village panchayat on 04.09.1999 and in the said compromise, 4 marlas property

allotted to father of the plaintiff was given to father of the plaintiff and other 09 marlas belonging to Mukthair Singh (father of the defendants) and aunt-Jangir Kaur was given to the defendants/ applicants and it was agreed between the parties that no party shall interfere into the peaceful possession of the other party and plaintiff has merged 4½ marlas with his house and a wall has been constructed to the eastern belonging to the side of the property defendants/applicants. Since then, the plaintiff has no concern or title with the property possessed by the defendants Jangir Kaur as owned and and aunt- the defendants came into the possession after the death of their father and now the defendants/applicants and their aunt Jangir Kaur are in equal possession of the aforesaid property. "

On Merits:

"1 and 2 XXXX XXXX XXXX XXXX

3. The actual facts are that 0 kanals 09 marlas property within 'lal-lakir' of the village was Muslim property, out of which 4 marlas belongs to one Budha Ghamiar and the same was in possession of Tota Singh (grand-father of defendants) since 1947-48. Similarly, 4 marlas, which adjoining to the eastern side of the property belongs to Tota Singh, belongs to one Kalu s/o Boria, Muslim was in possession of Chet Singh (father of the plaintiff) Chet Singh, as the same was allotted to father of the plaintiff. Thereafter joint sale certificate was issued by The Tehsildar vide file no. 1074/VI dated 23.8.1964.

Lateron, on 5.9.1964, an application was moved by Chet Singh (father of the plaintiff) for issuance of separate Sale Certificate with respect to 4 marlas allotted to Tota Singh (grand-father of the defendants) and 4½ marlas allotted to Chet Singh, father of the plaintiff. Accordingly, sale certificate was separate issued by Sale Tehsildar, Bathinda. Apart from it, 4 marlas property was also purchased from one Taro Muslim by the father of the defendants/ applicants and aunt-Jangir Kaur w/o Jit Singh. In this way, father of the defendants/applicants and aunt namely Jangir Kaur w/o Jit Singh became owner in possession of 09 marlas (i.e. 4 marlas allotted to Tota Singh, grand-father of the defendants and 4 marlas property purchased from said Taro). Since then, they remained owners in possession of said 09 marlas. The father of the defendants/ applicants and aunt-Jangir Kaur, also constructed the room for storing the 'Chalf' (Toori) and also planted the trees of Neem and using the above said property for their personal use as owners thereof. The property i.e. 4½ marlas allotted to Chet Singh was in possession of Chet Singh since the date of allotment, which is situated towards the eastern side of the property of defendants/applicants.

In the year 1999, some dispute arose between the father and aunt of the defendants/ applicants with the plaintiff and his brothers namely Karnail Singh, Jarnail Singh and Boota Singh regarding the use of property measuring 09 marlas owned and

possessed by father and aunt of the defendants/applicants. It is not out of place to mention here that the plaintiff is known as Kaka by nick name. Accordingly, father of the defendants namely Mukhtiar Singh and aunt-Jangir Kaur filed a civil suit against the plaintiff and his brothers titled as 'Mukhtiar Singh and another versus Karnail Singh & others'. Copy of the plaint of the said suit is enclosed herewith for the kind perusal of this Hon'ble court. After the filing of the said civil suit, compromise was effected between (father of the Mukhtiar Singh defendants/applicants), aunt-Jangir Kaur with Karnail Singh & others, in the presence of respectable and village panchayat on 04.09.1999 and in the said compromise, 4 marlas property allotted to father of the plaintiff was given to father of the plaintiff and other 09 marlas belonging to Mukthair Singh (father of the defendants) and aunt-Jangir Kaur was given to the defendants/ applicants and it was agreed between the parties that no party shall interfere into the peaceful possession of the other party and plaintiff has merged 4 marlas with his house and a wall has been constructed to the belonging eastern to the side of the property defendants/applicants. Since then, the plaintiff has no concern or title with the property possessed by the defendants owned and Jangir Kaur as the defendants came and aunt- into the possession after the death of their father and now the defendants/applicants and their aunt Jangir Kaur are in equal possession of the aforesaid property."

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

6. On the one hand, the learned counsel representing the petitioners (defendants in the suit) contends that all the three reasons given by the trial Court are not made out and the case is at the preliminary stage. He submits that the defendants came to know of the detailed facts during the pendency of the suit, therefore, they should be permitted to amend the pleadings.

7. On the other hand, the learned counsel representing the plaintiff (respondent herein), while supporting the order passed by the trial Court, prays for dismissal of the revision petition. He also relies upon the judgment passed by the Supreme Court in *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another* 2022 AIR (Supreme Court) 4256.

8. This Court has considered the submissions. It is evident from the reading of the proposed amendment that the defendants are bringing in certain facts which are based on the record. The allotment of the property in the year 1964 remains the same as it was in the unamended written statement. However, it has been pleaded that the separate sale certificates were issued by the competent authority to Tota Singh and Chet Singh with respect to the plot measuring 4½ marlas each. Now, the defendants want to add that another plot measuring 4½ marlas was purchased by their aunt, namely Smt.Jangir Kaur from Smt. Taro (Muslim) and thereafter, Tota Singh and Smt.Jangir Kaur became owners in possession of the plot measuring 9 marlas i.e. 4½ marlas allotted to Tota Singh and 4½ marlas purchased by

Smt. Jangir Kaur, their aunt. Moreover, the defendants have also sought to assert that in the year 1999, there was some dispute between Mukhtiar Singh, on one hand and the plaintiff and his brothers Karnail Singh, Jarnail Sihng and Buta Singh, on the other hand, resulting into a civil suit titled as “Mukhtiar Singh and Others v. Karnail Singh and Others”. During the pendency of the aforesaid suit, a settlement was arrived at between the parties to the aforesaid suit in the presence of the respectables and Panchayat on 04.09.1999 and in the aforesaid settlement of 4½ marlas property, which was allotted to Chet Singh, was kept as it is, whereas the remaining 9 marlas plot was given to the defendants. Thereafter, a wall was constructed on the Eastern side of the property belonging to the defendants and since then, the plaintiff had no concern with the property in possession of the defendants.

9. The aforesaid facts, sought to be incorporated, do not result in change of the case set up by the defendants. Moreover, the defendants have not withdrawn any admission which was made in the unamended written statement. On a Court question, the learned counsel representing the respondent (plaintiff) has failed to show as to how the aforesaid amendment is malafide.

10. In fact, by the proposed amendment, the defendants are trying to assert the facts which have come to their knowledge during the pendency of the suit. Filing of the previous suit and settlement arrived at during the pendency thereof is required to be proved by the defendants by leading evidence. They are also required to prove that in the year 1964, the plots measuring 4½ marlas each were separately allotted to Chet Singh and Tota Singh. In these circumstances, the trial Court has erred in dismissing the

application. This Court has also carefully read the judgment passed in ***Life Insurance Corporation of India*** (*supra*). In para 70 of the said judgment, the Supreme Court, after examining the entire case law, has held 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 negatived.

(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 pinpointedly 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).*”

Ultimately, the Supreme Court dismissed the appeal and upheld the order passed by the learned Single Judge allowing the amendment application.

11. Keeping in view the aforesaid facts and discussion, the present revision petition is allowed. The impugned order is set aside. The defendants’ application for permission to amend the written statement shall stand allowed.

(Anil Kshetarpal)
Judge

September 06, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No