

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-1933-2021 (O&M)  
Date of Decision: August 29, 2023

Sunder  
...Petitioner

Versus

Mukesh and another  
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Mani Ram Verma and Mr.Nipun Verma, Advocates  
for the petitioner.

Mr.Ajay Ghangas, Advocate  
for respondent No.1.

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ARCHANA PURI, J.

Through the present petition under Article 227 of the Constitution of India, the petitioner has invoked the jurisdiction of this Court to challenge the order dated 23.08.2021 (Annexure P-4) passed by learned Court below, whereby, an application filed by the petitioner-defendant, for seeking amendment of the written statement was dismissed.

The essential facts, as culled from the paper-book are that, initially, respondent No.1-plaintiff Mukesh had filed a suit against the petitioner and proforma respondent, thereby, seeking possession by way of ejectment of the land measuring 323.51 sq. yards, as detailed in the head-

note of the plaint, copy whereof is Annexure P-7. The said suit was filed on the basis of the title, by virtue of sale deed dated 29.11.2012. After recording evidence of four witnesses, when the case was at the stage of recording of further evidence, an application under Order 6 Rule 17 CPC for seeking amendment of the written statement was filed by the petitioner-defendant as well as proforma respondent.

It is submitted by learned counsel for the petitioner that even though, in the written statement filed, the defendants, as such, had denied the ownership of the plaintiff or his vendor qua the suit property and had claimed ownership of the property in dispute, on the basis of long possession, but however, inadvertently, they could not take alternative plea that they have become owners of disputed land by way of adverse possession also and suit being barred by limitation. On this account, amendment was sought.

Now, to so substantiate their arguments that amendment can be allowed, at any stage and the Courts ought to be more generous in allowing the amendment of the written statement, as the question of prejudice is less likely to operate in that event and furthermore, that proposed amendment shall facilitate the Court to determine the real question of controversy between the parties, learned counsel for the petitioners have placed reliance upon judgments passed in *M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362, Andhra Bank vs. ABN Amro Bank N.V. & Ors., AIR 2007 Supreme Court 2511, Rajesh Kumar Aggarwal & Ors. vs. K.K.Modi & Ors., 2006(2) RCR (Civil) 577 and Amar Singh vs. Nirmal*

*Singh and another, 2016(3) RCR (Civil) 192.*

On the contrary, learned counsel for the respondent-plaintiff has assiduously submitted that the petitioner-defendant, as such, has not come to the Court with clean hands. The application for seeking amendment has been filed with malafide intention to undo the interest created in favour of the respondent-plaintiff, on the basis of clear admission, coming forth, at the behest of the petitioner-defendant. In this regard, learned counsel for the respondent has made reference to the written statement of the petitioner as well as proforma respondent, which is Annexure P-1. In the same, it is submitted that petitioner as well as proforma respondent had asserted themselves to be owner in possession of the suit property and that respondent-plaintiff has no concern with the suit property and therefore, question of title or interest, passing in the suit property, in favour of the plaintiff, does not arise. Also, it has been pointed out that at earlier instance also, the petitioner and proforma respondent had filed a suit for permanent injunction, thereby, asserting themselves to be owners-in-possession of the suit property and therein also, no such plea of adverse possession had been taken. It thus shows that the application has been filed with malafide intention to counter the right of the respondent-plaintiff.

It is submitted that the clear admission, coming forth, at the behest of the defendants, by way of seeking the amendment now, cannot be undone. To so substantiate his claim, learned counsel for the respondent has placed reliance upon the judgments passed in *M/s Modi Spinning and Weaving Mills Co. Ltd. and another vs. M/s Ladha Ram and Co., 1977 AIR*

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*(Supreme Court) 680, Heeralal vs. Kalyan Mal, 1998(1) RCR (Civil) 140, Ajmer Singh vs. Kavita Rani and others, 2017(1) LAR 617, Charan Kaur and another vs. Pritam Singh and others, 2006(2) RCR (Civil) 64, Smt.Namrita and another vs. Ram Parkash and others, 1990(2) PLR 513 and Harbhol Singh vs. Pritam Singh, 2001(3) RCR (Civil) 806.*

In the present case, respondent No.1-plaintiff had filed a suit for seeking possession by way of ejectment of the land, as detailed in head-note of the plaint. Therein, respondent No.1-plaintiff Mukesh had asserted about the land to have been purchased by him, vide sale deed dated 29.11.2012 and on the basis of the title, he claimed himself to be bonafide purchaser and that the defendants i.e. the present petitioner and proforma respondent, have no concern or connection with the suit land.

To the said plaint, written statement had been filed, copy whereof is Annexure P-1. Therein, the petitioner and proforma respondent had taken the plea that plaintiff had no connection or concern with the ownership and possession of the suit property. In fact, they themselves asserted to be owners-in-possession of the suit property and using the same as its true owners. It is repeatedly, so coming forth, in the entire written statement. Specifically, it has been pointed that the plaintiff had no connection or concern with the ownership and possession of the suit property and as such, question of any title or interest, in the suit property, does not pass in favour of the plaintiff. Meaning thereby, they have denied the title of the respondent-plaintiff.

Not only this, prior to the suit filed by the respondent-plaintiff,

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the petitioner and proforma respondent had also filed a suit titled 'Sunder and another vs. Mukesh' which was for the issuance of permanent injunction, copy whereof is Annexure P-5, which clearly reveals about the plaintiffs(Sunder and Rajesh) to have asserted themselves to be owners-in-possession of the suit property and therein, it was also asserted that defendant Mukesh i.e. plaintiff of the suit in hand, has no concern with the same. Since, the specific plea has been taken that they are owners and in possession of the property in question and that Mukesh had not right or title over the suit property, the plea of adverse possession, now intended to be taken, as such, would be contrary to this stand. Petitioner-defendant and proforma respondent were aware of their position, at earlier point of time, more particularly, at the time of filing of the previous suit and therefore, the plea of adverse possession, which is set up against the true owner, is inconsistent plea.

By virtue of said stand taken by the petitioner-defendant and proforma respondent, in the suit, previously filed, at their instance and also by virtue of filing of the written statement, in the case in hand, certain rights have accrued to the respondent-plaintiff and thus, by allowing the amendment, the admission, as such, of being owners, onus of which will be upon them, which had been made by the defendants, which is sought to be taken away, cannot be permitted.

It is important 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:-

(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**

(c) xxxx                      xxx                      xxx                      xxx                      xxxx

xxxx                      xxx                      xxx                      xxx                      xxxx

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.

Also, it was observed that amendment is to be allowed, unless the amendment changes the nature of the suit or the prayer for amendment is

malafide or by the amendment, the other side loses a valid defence.

In the light of the aforesaid dictum, the amendment can be allowed at any stage, but for the good grounds, spelt out for the same. As already observed aforesaid, in the case in hand, the petitioner-defendant, at first instance, had filed a suit for permanent injunction, vis-a-vis, the suit property. Therein, he along with proforma respondent had asserted himself to be owner-in-possession of the suit property. In the subsequent suit, coming forth, on the basis of the title, at the instance of respondent-plaintiff Mukesh, again the defendants had asserted about themselves to be owner-in-possession. They denied about the title claimed, as set up by the respondent-plaintiff.

In the given circumstances, by virtue of seeking amendment in question, to assert the plea of adverse possession, evidently, the petitioner intends to undo the clear admission earlier made, at his instance, which would definitely, prejudice the claim of the respondent-plaintiff.

In view of the aforesaid fact situation, learned Court below, was justified in denying the proposed amendment. Consequently, the impugned order calls for no interference. Hence, the present revision petition stands dismissed.

August 29, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No