

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-8445-2018 (O&M)
Date of decision : 18.05.2023

Kuljinder Kaur & Ors ... Petitioner(s)

Versus

Gurbachan Singh Saini & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushil Saini, Advocate for the petitioners.
Mr. Sanjay Jain, Advocate for respondent Nos.1 to 3.

ALKA SARIN, J. (ORAL)

CM-5160-CII-2023

This is an application for preponing the date of hearing in the
main case from 09.08.2023 to an early date.

For the reasons stated in the application, the same is allowed.
With the consent of learned counsel for the parties, the main case is taken on
Board today itself.

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1. The present revision petition has been filed challenging the
order dated 08.08.2018 (Annexure P-9) whereby the application filed by the
plaintiff-petitioners for amendment of the plaint under order 6 Rule 17 of the
Code of Civil Procedure, 1908 (CPC) has been dismissed.
2. The brief facts relevant to the present *lis* are that the suit was

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initially filed by the plaintiff-petitioners for mandatory injunction directing the defendant-respondents to hand over the vacant possession of portion of House No.16, Amar Nagar, near Raja Park, Ambala Cantt. as also for payment of *mesne* profits @ Rs.5,000/- per month from the date of filing of the suit till delivery of possession. In the plaint it was averred that the plaintiff-petitioners were absolute owners of the property in dispute. The written statement was filed by the defendant-respondents wherein it was specifically averred that there has been concealment of facts and that the property was originally owned by Labh Singh and divided during his life time in equal shares between his two sons and separate possession was given to both. Thereafter, an application for amendment of the plaint was filed for adding para 1A, which reads as under :

“Para 1(A) - That Labh Singh was exclusive owner of the house in question. Labh Singh had purchased the house in question i.e. House No.16, Amar Nagar, Ambala Cantt vide registered sale deed registered as Deed No.2549, Bahi No.1, Jild No.490 dated 06.09.1973 and after purchasing the plot he had raised the construction. Besides the house in question, Labh Singh son of Mehar Singh also owned land and property in village Jaffarpur, Tehsil and District Gurdaspur (Punjab) and during his life time Labh Singh had executed a registered Will of his freewill and consent

which was registered as Deed No.289, Bahi No.3, dated 05.02.2009 registered with the Sub-Registrar, Gurdaspur (Punjab). Photocopy of the sale deed dated 06.09.1973 is being filed with the plaint. By virtue of which Labh Singh had bequeathed/ Willed ½ share in the land and property situated in village Jaffarpur/ Jaafarpur, District Gurdaspur (Punjab) in favour of Karan Saini son of Gurbachan Singh defendant no.1, whereas 1/2 share of the land and property and Jaffarpur/ Jaafarpur, District Gurdaspur (Punjab) in favour of plaintiff no.1 Kuljinder Kaur wife of Late Shamsher Singh and grandsons Manik and Iqbal (Plaintiffs No.2 & 4) and the entire house/ property No.16, Amar Nagar, Ambala Cantt was also wholly bequeathed/willed in favour of Kuljinder Kaur widow of Shamsher Singh, Manik Saini and Iqbal Saini (i.e. plaintiffs No.2 & 4) sons of Shamsher Singh. Photocopy of the registered Will dated 05.02.2009 is being filed with the plaint.

That Labh Singh died on 06.05.2012. Photocopy of death certificate of Labh Singh son of Mehar Singh is being filed with the plaint. That after the death of Labh Singh son of Mehar Singh the plaintiffs No.1, 2 and 4 and Karan Saini son of Gurbachan Singh - defendant no.1

have inherited the entire property as per Will dated 05.02.2009, executed by Labh Singh son of Mehar Singh and mutations of the land and property at Jaffarpur, District Gurdaspur have been entered in the revenue record to the extent of ½ share in the name of Karan Saini and ½ share in the name of Kuljinder Kaur (plaintiff no.1), Manik Saini (plaintiff no.2) and Iqbal Saini (plaintiff no.4). Copy of mutation is being filed with the plaint Similarly, mutation of house in question i.e. House No.16, Amar Nagar, Ambala Cantt have also been entered in the record of Municipal Corporation, Ambala (Sadar Zone) in the name of Kuljinder Kaur (plaintiff no.1), Manik Saini (plaintiff no.2) and Iqbal Saini (plaintiff no.4) vide letter No. TS-12/1663 dated 06.11.2012 issued by Municipal Corporation, Ambala (Sadar Zone). Copy letter/mutation is being filed and copy of assessment registered by Municipal Corporation, Ambala (Sadar Zone) is being filed with the plaint.”

3. A reply to the application was filed and vide the impugned order dated 08.08.2018 (Annexure P-9) the amendment application was dismissed. Hence, the present revision petition.

4. Learned counsel for the plaintiff-petitioners would contend that

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the factum of the Will was inadvertently left out and hence it was now sought to be added. The facts regarding the Will and the plaintiff-petitioners having become owners on the basis of the Will dated 05.02.2009 were now sought to be added.

5. *Per contra*, learned counsel for defendant-respondent Nos.1 to 3 would contend that the written statement was filed by the defendant-respondents and the plaintiff-petitioners also filed their replication. Thereafter, the issues were framed and after having availed 6 opportunities to lead their evidence, the present application was filed. It is further the contention that the application is itself bereft of any reason as to why the said pleas were not raised earlier. It is further the contention of learned counsel that by way of the present amendment, the very nature of the suit is being changed from that of a suit for mandatory injunction to a suit for declaration.

6. Heard.

7. In the present case originally a suit for mandatory injunction was filed. Now by way of the amendment, the plaintiff-petitioners are seeking to change the nature of the suit by converting it into one for declaration by setting up a Will dated 05.02.2009.

8. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.** [2023 (1) RCR (Civil) 851] 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 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 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)”

9. In the present case, the amendment sought is changing the nature of the suit and the cause of action and is setting up entirely a new case. By way of the amendment, a totally new case is being set up inasmuch as in the plaint filed initially there was no mention as to on what basis the plaintiff-petitioners had become the owners of the property. However, now by way of the amendment a Will is sought to be introduced and it is claimed that the plaintiff-petitioners have become the owners of the suit property on the basis of the Will dated 05.02.2009. As per the law laid down in the case of **Sanjeev Builders Private Limited** (supra) this amendment cannot be allowed.

10. In view of the above and keeping in view the law laid down by Hon’ble Supreme Court in the case of **Sanjeev Builders Private Limited** (supra), the present revision petition, which is wholly devoid of any merit, is

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accordingly dismissed.

11. Dismissed. Pending applications, if any, also stand disposed off.

18.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO