

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1752 of 2016

Reserved On: 20.11.2023
Pronounced On: 05.01.2024

Daljit Kaur (Deceased) through her Legal Representatives and Another
... Petitioner(s)

Versus

Bhupinder Singh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anand Chhibbar, Senior Advocate
with Mr. Nitin Thatai, Ms. Monika Thatai,
Ms. Shruti Sharma and Ms. Khyati, Advocates
for the petitioner(s).

Mr. Aashish Chopra, Senior Advocate
with Mr. Vaibhav Sehgal, Mr. Varun Ayan Sharma, Advocates
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. This is the plaintiffs' revision petition to challenge the correctness of the two impugned orders passed by the Civil Judge (Junior Division), Ludhiana on 20.11.2015. Vide Annexure P17, the trial Court has dismissed as many as four applications filed by the plaintiffs, two filed under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), whereas two under Order 6 Rule 17 CPC. Through the second order, the civil suit filed by the plaintiffs has been dismissed on the ground that the same has become infructuous.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The petitioners,

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namely Daljit Kaur and Gursharan Kaur, mother and daughter, filed a suit against Bhupinder Singh for the grant of permanent injunction restraining the defendants from interfering into their possession with respect to the plot comprised in khasra No. 186 (min) with two rooms and a staircase. The plaintiffs claimed that they purchased the aforesaid property, measuring 527 square yards in total, through two different registered sale deeds, one executed by Gurmeet Singh, whereas the second executed by Kishan Singh, both sons of Hazara Singh, on 29.02.1988, which were registered on 01.03.1988. In para 3 of the plaint, the plaintiffs claimed that after purchasing the property, the plaintiff No.1 constructed two rooms in her portion of the property and rented out one room abutting the road linked to Amrik Singh's property. Thereafter, Amrik Singh got on rent two rooms situated on the first floor of the adjoining house i.e. 66-C. For his convenience, and for proper usage of both the rooms on the first floor of the adjoining house No. 66-C along with the two rooms in khasra No. 186, he was allowed to construct a staircase. Subsequently, Amrik Singh surrendered the tenancy of two rooms forming a part of House No. 66-C and the room which was taken on rent from the plaintiff No.1. Even after he surrendered the tenancy, the staircase remained intact. Thereafter, the plaintiff No.1 rented out that room to Tulsi, a washerman, on a monthly rent of ₹400/- per month. However, he refused to pay the rent despite repeated requests. The defendant started making attempts to take forcible possession of the property taking advantage of the plaintiff's, gender and their absence from the site. Hence, the plaintiffs filed the suit on 18.02.1999.

while contesting the suit.

4. After the defendants filed the written statement, the plaintiffs filed the replication. On 29.02.2000, the plaintiffs filed an application under Order I Rule 10 read with Order VI Rule 17 CPC. In the aforesaid application, the plaintiffs claimed that they have been forcibly dispossessed during the pendency of the suit and Jaswinder Kaur wife of Bhupinder Singh, Amrik Singh, Sukai and Tulsi Ram should be permitted to be impleaded as the defendants. It was projected that Amrik Singh claimed to have purchased the property. The defendant claims that Amrik Singh was the owner of the property in dispute who had handed over the property to him. Similarly, Jaswinder Kaur along with her husband Bhupinder Singh has filed a suit for permanent injunction against the plaintiffs and Mohinder Singh. Similarly, Sukai son of Nand Lal and Tulsi Ram son of Sukai have filed a suit for permanent injunction restraining Bhupinder Singh, defendant, Daljit Kaur, plaintiff and Mohinder Singh from dispossessing them from the room forming a part of property i.e. Unit No. 29-C, Model Town Extension, Ludhiana. The plaintiffs also prayed for permission to amend the plaint to seek relief of possession as they have been dispossessed during the pendency of the suit. They also sought relief of recovery of amount towards the charges for use and occupation of the premises. Before the application could be decided, the plaintiffs filed yet another application under Order 1 Rule 10 CPC in the year 2009 with a prayer to implead Ravinder Singh son of Satnam Singh as defendant No.6 and consequent amendment in the plaint.

Both the applications were dismissed by the trial Court on 23.07.2015, on the ground that a combined application under Order VI Rule 17 and Order I

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Rule 10 CPC is not maintainable. Thereafter, the plaintiffs filed four separate applications, two under Order I Rule 10 CPC and two under Order VI Rule 17 CPC. All the four applications have been dismissed by the trial Court on the ground that a suit for possession against Tulsi is not maintainable as the proper remedy available against the alleged tenant Tulsi is to file a petition before the Rent Controller. The Court has further observed that a proper remedy available to the plaintiffs is to file a suit for declaration to the effect they are the owners of the suit property. With these observations, all the four applications have been dismissed. On the same day, the Court has also dismissed the suit as infructuous on the ground that the plaintiffs admitted that they have been dispossessed by the defendant in connivance with his wife.

5. Heard the learned senior 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 submits that the trial Court has adopted a narrow approach in deciding the application. He submits that the plaintiff's wife made prayer in the application filed under Order VI Rule 17 CPC to seek the relief of possession of the property. It is submitted that impleadment of Jaswinder Kaur, Amrik Singh, Sukai son of Nand Lal, Tulsi son of Sukai and Ravinder Singh was necessary because all these persons have filed the separate suits against the plaintiffs and are claiming right, title or interest in the property. Hence, the suit was sought to be made comprehensive in order to decide the rights of all the parties. He further submits that the trial Court has also erred

in passing the order on 23.07.2015, while dismissing the application on the

ground that in the single application for both the reliefs under Order VI Rule 17 and Order I Rule 10 CPC could not be clubbed.

7. On the other hand, the learned senior counsel representing the respondent submits that the trial Court has only directed the plaintiffs to file a fresh comprehensive suit for the grant of decree of declaration.

8. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

9. Order I Rule 10 CPC enables the Court to add or strike out the name of the parties. Order I Rule 10 (4) CPC itself envisages that where a new defendant is added, the plaint shall be amended in such manner as may be necessary. On the other hand, Order VI Rule 17 CPC permits either party to the suit to alter or amend his pleadings. The ultimate object of both the provisions is to avoid the multiplicity of the litigation and to decide the rights of the parties in a comprehensive manner. In fact, the rules of procedure are the handmaids of justice. The Courts are expected to advance the cause of justice while trying to follow the procedural law. However, the rules of procedure shall not be interpreted in a manner which ultimately defeat the cause of justice or result in unnecessary procedural difficulties. Attention of the Court has not been drawn to any statutory prohibition which debars the party from filing a single application for seeking relief under Order I Rule 10 and Order VI Rule 17 CPC collectively. In fact, as already noticed, Order I Rule 10(4) CPC itself elucidates the requirement of consequential amendments to be carried out in the plaint whenever the defendant is added, if necessary. Sometimes, the prayer made under Order I

shall allow a single application to be filed, the same shall help in avoiding the filing of multiple applications which would ultimately result in saving the precious time of the Court. The docket of the Court shall also not be unnecessarily burdened if one single application is permitted to be filed in case where it is feasible to do so. The trial Court, while dismissing the applications, has relied upon the judgment passed in *Nirmal Singh and Others v. Tarsem Singh and Others 2014(4) CCC 670*. This Court has carefully read the aforesaid judgment. The brother Judge in the said judgment has observed that if a single application is permitted to be filed, it would further complicate the situation. The judgment only highlights a difficulty the Courts may face if a single application is allowed to be filed. The judgment is not based on the interpretation of any statutory provision either in the CPC or in the High Court Rules and Orders that bars the party from filing the application and Court from allowing it. In such circumstances, with the highest respect, the aforesaid judgment shall not be treated as laying down a *ratio decidendi* or declaration of law. It is only a short order passed by the Court keeping in view the peculiar facts and circumstances of the case. It has been noticed that this judgment has been referred to in *Kulbhushan v. Bhupinder Kaur and Others (Civil Revision No. 7970 of 2017, decided on 06.09.2017)*. In this case, there is a brief reference to the judgment passed in *Nirmal Singh's case (supra)*. This judgment has also been cited in *Ravinder Kaul and Others v. Neelam Rani and Others 2019 (4) Punjab Law Reporter 298*. Again, the judgment in *Nirmal Singh's case (supra)* has only been referred to. Similarly, in *Smt. Darshana alias Geeta and Others v. Charan Dass and Others 2018(2)*

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LAR 308, there is a reference to the judgment passed in *Nirmal Singh's case (supra)*. However, in all the aforementioned judgments, there is no declaration to the effect that a combined application containing two different prayers is not maintainable in accordance with any particular provision of the CPC. Hence, with the greatest respect, these orders have been passed in the peculiar facts of those cases and shall not be treated as a precedent laying down a declaration of law.

10. Now, reverting back to the merits of this case. It is evident that Tulsi has set up a title by filing a separate suit. In such circumstances, Tulsi has forfeited his tenancy. In any case, at this stage, only an application has been filed under Order I Rule 10 CPC to implead Tulsi, who has already filed a separate suit. It is the case of the plaintiffs that Tulsi has colluded with Bhupinder Singh and his wife. In these circumstances, the Court has erred in dismissing the application on the ground that suit for possession against the tenant is not maintainable.

11. The second reason assigned by the trial Court is also erroneous. The plaintiffs, while filing four applications, have already made a prayer for the grant of decree of declaration because Ravinder Singh who has been sought to be impleaded as defendant No.6, claims to have purchased the property from Gurmeet Singh vide sale deed dated 08.12.2006. The plaintiffs claimed that Gurmeet Singh was left with no right, title or interest after he sold the property in their favour on 29.02.1988, which was registered on 01.03.1988. Thus, the plaintiffs, while filing an application under Order VI Rule 17 CPC, have already made a prayer for the grant of decree of declaration as well as possession.

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12. In considering the petition, it is crucial not to overlook an additional factor that holds significance. The suit was instituted in the year 1999. The trial Court directed the plaintiffs to file a fresh comprehensive suit in the month of November, 2015, after the passage of more than 16 years. The trial Court shall have allowed the plaintiffs to amend the suit so as to comprehensively decide the case.

13. Similarly, the trial Court has also erred in dismissing the suit as infructuous.

14. The Court should allow amendment in the pleadings in a liberal manner wherein cases are at a preliminary stage. In this case, originally, an application under Order I Rule 10 and Order VI Rule 17 CPC was filed on 29.02.2000 i.e. at the initial stage of the suit because the replication to the written statement was filed by the plaintiffs on 31.08.1999. Thereafter, yet another application was filed in the year 2009, which was ultimately dismissed with the liberty to file a separate application vide order dated 23.07.2015. The plaintiffs, in the month of August, 2015, filed four applications which were decided against them. Thus, no evidence in the suit has been recorded even until now. The substantive amendments to the pleadings should be allowed by the trial Courts for dispensing justice in an expeditious manner. The reliance in this regard can be placed 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.

revision petition is allowed. The orders passed by the trial Court on 20.11.2015, are set aside and the applications are allowed.

(Anil Kshetarpal)
Judge

January 05, 2024
“DK”

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