



In the High Court of Punjab and Haryana at Chandigarh

CR No.693 of 2024(O&M)

Date of Pronouncement: 09.08.2024

Santram and others

.....Petitioners

Versus

Partap Singh and another

....Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Atul Yadav, Advocate for the petitioners.

Mr. Manu Sachdeva, Advocate for
Mr. Abhimanyu Singh, Advocate for the respondents.

RITU TAGORE, J.

1. Challenge in this revision petition, filed under Article 227 of the Constitution of India, is to the order dated 12.01.2024 (Annexure P-8), passed by the learned Civil Judge (Junior Division), Pataudi, District Gurugram, whereby application (Annexure P-6) under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC'), filed by the respondents/plaintiffs, seeking amendment of plaint (Annexure P-1), has been allowed.

2. Learned counsel for the petitioners/defendants submits that respondents/plaintiffs filed a suit (Annexure P-1) for declaration with the consequential relief of permanent and mandatory injunction on the grounds that earlier Nihal Singh, father of respondent No.1/plaintiff No.1 and grandfather of respondent No.2, was the owner in possession of the suit property and after the death of Nihal Singh, the respondent No.1/plaintiff No.1 and



Bharam Singh (father of respondent No.2), came in possession of the suit property and constructed their house and use it for miscellaneous purposes, namely kitchen gardening, placing their agricultural appliances, for parking tractor etc, and sought a decree for permanent injunction against the petitioners/defendants, restraining them from interfering or dispossessing them from the suit property.

3. Learned counsel for the petitioners submits that, pursuant to the notice of the learned Trial Court, the petitioners/defendants appeared and filed their contested written statement (Annexure P-2), challenging the *locus standi* of respondents/plaintiffs to file and maintain the suit against them. Further, claiming their established possession on the suit property as *gair marusi* and unlawful interference in their possession by the respondents/plaintiffs. Learned counsel further submits that the contempt petition filed by the respondents/plaintiffs against the petitioners for violating the ex parte order dated 03.06.2017 has been dismissed by the learned Trial Court vide order dated 18.10.2023 (Annexure P-5), proving that the alleged story of construction raised by the petitioners during the pendency of the suit has been disbelieved by the learned Court.

4. Learned counsel for the petitioners contends that when the main suit was scheduled for final arguments after the conclusion of the evidence by both the parties, then respondents/petitioners moved an application for amendment of the plaint (Annexure P-6), seeking to incorporate the relief of possession in the plaint. It is submitted that learned Trial Court allowed the application without appreciating that application for amendment was filed at a belated stage, further that contempt petition filed by the



respondents/plaintiffs against the petitioners for raising construction had already been dismissed, vide order dated 18.10.2023 (Annexure P-5). Furthermore, the proposed amendment would change the nature of the suit and result in *de-novo trial*.

5. Learned counsel further submits that the note recorded by the learned Trial Court that, the counsel for the petitioners did not opt to lead evidence after the amendment, is arbitrary. This prevented the petitioners from raising their defence and rebutting the version of the respondents regarding the additional relief of possession taken by the respondents by way of amendment of the plaint. It is stated that impugned order is subject to being set aside as it contravenes the established legal principles and judicial precedents which provide that a party should not be permitted to amend its pleadings, if fails to establish due diligence on its part.

6. Per contra, learned counsel for the respondents defended the order, stating that it is established principle of law that all the amendments are required to be allowed, which are necessary for determining the real controversy and prevents further litigation between the litigating parties. It is submitted that during the trial, petitioners completed the construction of one room of tin shed, that necessitated the amendment of the plaint. Learned counsel argues that the learned Trial Court upon considering the pleadings of the parties, deemed the amendment of plaint necessary for the complete adjudication of the matter and further concluded that such an amendment would not alter the nature of the suit. A prayer is made for dismissal of the petition, for lacking merits.

7. I have heard learned counsel for the parties, perused the paper-



book and the documents annexed.

8. The material facts are not in issue. Learned Court below while allowing the application vide order dated 12.01.2024 (Annexure P-8) determined, in para 4, as under:-

“4. Perusal of the application as well as reply and file, clearly shows that the proposed amendment is formal in nature as only prayer clause is sought to be amended by way of adding relief of possession whereas mandatory injunction has already been claimed by the plaintiff in the shape of removing the construction of the defendants over the suit property. This would not change the nature of the suit nor require any evidence upon this point as both the parties have fought the case on this issue itself. The objections of the respondents are baseless and not maintainable. Hence, application in hand is allowed subject to cost of Rs.2000/- upon the plaintiff for delay to the defendants.”

9. The learned Trial Court categorically observed that relief of mandatory injunction has already been sought by the plaintiffs by way of removal of construction of the petitioners/defendants from the suit land and further the amendment would not change the nature of the suit.

10. Hon’ble the Supreme Court in **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, AIR 2022 Supreme Court 4256**, while dealing with the proposition of law pertaining to amendment of pleadings, culled out the following principles:-

“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.”

11. Considering the pleadings of the parties, this Court finds that proposed amendment will not change the nature of the suit, rather would help the Court to decide the controversy comprehensively and will prevent proliferation of the litigation between the parties. According to the respondents, the petitioners raised the construction during the pendency of the suit, necessitated them to move an application. This, *prima facie*, makes a case of due diligence on their part. The effect of the dismissal of contempt petition filed by respondents, would be a matter for the Trial Court to appreciate on the merits of the case. Furthermore, keeping in mind the observations made in **Life Insurance Corporation of India's** case (supra) and the settled exposition of law, filtered through judicial pronouncements, I do not find any illegality or irregularity in the judicial discretion exercised by the learned Trial Court, warranting any interference in the impugned order dated 12.01.2024 (Annexure P-8).



12. Accordingly, this revision petition is hereby dismissed.
13. However, learned Trial Court should grant one effective opportunity to both the parties to lead evidence on the additional plea of possession, which has been incorporated by way of amendment. It is further observed that since the suit is at the fag end of the case, it is expected that parties shall cooperate with the Court in concluding the evidence without taking undue adjournments.
14. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.
15. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 09, 2024
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(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No