

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 3609 of 2023****Date of Decision: 15.03.2024**

Inder Mohan Verma alias Chajju Ram (Deceased) through his Legal Representative and Others

... Petitioner(s)

Versus

Santosh Kumari and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chetan Bansal, Advocate
for the petitioner(s).

Mr. Mohit Kakkar, Advocate
for Mr. Bhupinder Ghai, Advocate
for respondent No.1 and 2.

Anil Kshetarpal, J.

1. In this revision petition, defendant No.1 to 3 challenge the correctness of the trial Court's order dated 17.05.2023 refusing to permit them to amend the written statement in order to incorporate the necessary averments with regard to the registered Will dated 29.09.2014 allegedly executed by late Sh.Inder Mohan Verma alias Chajju Ram in favour of Nina Rani wife of defendant No.2-Vijay Kumar and defendant No.4-Suresh Kumar Verma.

2. There are two separate suits pending between the parties. One suit is filed by two daughters of late Sh. Inder Mohan Verma, whereas another suit has been filed by defendant No.4-Suresh Kumar Verma. In the

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suit filed by defendant No.4-Suresh Kumar Verma son of late Sh. Inder Mohan Verma, the Will dated 29.09.2014 has already been made a part of the written statement filed by defendant No.2 and 3, namely Vijay Kumar son of late Sh. Inder Mohan Verma and Bharat Kumar son of Vijay Kumar. Whereas, in the suit filed by the daughters of late Sh. Inder Mohan Verma, Vijay Kumar and Bharat Kumar have failed to incorporate the assertion in their written statement with respect to the alleged Will. Hence, an application for permission to amend the written statement was filed, which was dismissed by the Trial Court on the ground that the trial has already commenced and the plaintiffs have already examined as many as seven witnesses.

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

4. The learned counsel representing the petitioners contends that the Will dated 29.09.2014 is a registered Will and it has already been made a part of the pleadings in the connected suit. The learned counsel submits that respondent No.1 and 2 (the plaintiffs) can be compensated by imposing some cost, however, the petitioners should not be deprived to bring on record the facts.

5. Per contra, the learned counsel representing respondent No.1 and 2 submits that as per the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), after the commencement of trial, the Court should not permit amendment.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. In this case, it appears that the petitioners have, by inadvertent mistake, failed to incorporate the factum of the alleged Will which has already been made a part of the pleadings in the connected suit. It is well settled that the rules of procedure are the handmaids of justice. An application for bringing on record the substantive facts by way of amendments, which effects the merits of the case, should not be refused only on the procedural defaults. Reliance can be placed on the judgment of the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another*** 2022 AIR (Supreme Court) 4256. In para 70 of the aforesaid judgment, the Supreme Court has culled out the following tests, which are required to be applied before allowing the amendment:-

“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)”

8. It is evident that in this case, the prayer for permission to amend the plaint is neither malafide nor irrelevant. The dispute is with regard to the property left behind by late Sh. Inder Mohan Verma. Hence, the Will, if any, left behind by late Sh. Inder Mohan Verma is required to be examined by the Court.

9. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned order dated 17.05.2023 is set aside and the petitioners are permitted to amend the written statement subject to payment of cost of ₹5,000/- to the opposite party.

(Anil Kshetarpal)
Judge

March 15, 2024
“DK”

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