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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4869-2024
Date of decision : 29.08.2024

SURENDER AHUJA AND ANRPetitioners

Versus

BHAVISHYA THROUGH HIS MOTHERS POONAM ...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rahul Jaswal, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Instant revision petition is directed against order dated 24.07.2024 passed by Civil Judge (Junior Division), Panipat whereby the application filed by the plaintiff under Order VI Rule 17 CPC seeking amendment of the plaint stands allowed.

2. Plaintiff filed suit for permanent injunction with the following prayer:

“It is, therefore, prayed that a decree for FOR PERMANENT INJUNCTION restraining the defendants from interfering in any manner in the peaceful possession of the plaintiff over the residential house the detail of which is given in the head note of the plaint Situated within the area H.No.09, Shanti Nagar, behind Sakhi Darbar, Model Town, Panipat, within Municipal Corporation, Panipat and further restraining the defendants from alienating the suit property in any manner whatsoever without in

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due course of law, in the interest of justice may be passed in favour of the plaintiffs and against the defendants.”

3. In the written statement stand of the defendants was as under :

“2. That in reply to para No.2 of the plaint it is submitted that mother of the plaintiff namely Poonam, who is a clever, cruel and quarrelsome lady, has filed the false litigations against the defendants with malafide intention of grabbing their property and extorting the huge money. However, it is pertinent to mention here that the plaintiff has sought the relief for Permanent Injunction regarding the land situated at H.No. 9, Shanti Nagar, behind Sakhi Darbar, Model Town, Panipat, but the Khasra no. mentioned in the plaint are pertaining the land situated at Virat Nagar, Panipat. Besides this, the dimensions mentioned by the plaintiff in his plaint is totally different from the dimensions mentioned in the sale deed bearing Vasika No. 7223 dated 06.02.2014. In the present suit, the plaintiff has intermingled two properties with each other and thus the plaintiff is not entitled to get any kind of relief from the Hon'ble Court. Besides this, the Khasra nos. mentioned in the plaint are not situated behind the Sakhi Darbar, Panipat.”

4. Thereafter, an application was moved by the plaintiff seeking amendment of the plaint under Order VI Rule 17 CPC proposing the following amendments:

- “a. In the head note on plaint after the words due course of law "alongwith declaration to the effect that the sale deed vasika no. 5506 dated 06.09.2022 is wrong, illegal, null and void and same is sham transaction and result of fraud and same is not binding on the rights of plaintiff".
- b. That in the prayer clause wants to amend after the words due course of law "alongwith declaration to the effect that.

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the vasika no. 5506 dated 06.09.2022 is wrong, illegal, null and void and same is sham transaction and result of fraud and same is not binding on the rights of plaintiff".

- c. The plaintiff wants to add a new para no.6-A that now the plaintiff came to know that the defendant no.2 has executed a sale deed vasika no. 5506 dated 06.09.2022 in the name of Raj Rani wife of Om Prakash, resident of House no. 57, Ramesh Nagar, Tehsil Camp, Panipat. This sale deed is a result of fraud, mis-representation, null and deed, mere paper transaction, without transferring any possession has no binding effects in the right of plaintiff.”

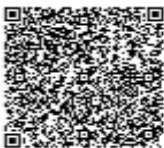
5. Trial Court vide impugned order has allowed the said amendment.

6. Ld. Counsel for the petitioner while assailing the impugned order submits that by way of amendment the plaintiff has now introduced new relief w.r.t. the property which was not subject matter of the earlier plaint and has in fact intermingled the two properties. The effect of the order passed by the Trial Court is that the entire nature of the suit stands altered.

7. I have heard counsel for the petitioner and have gone through records of the case.

8. On being asked a specific query w.r.t. the stage of trial, counsel for the petitioners has fairly admitted that the trial has not commenced as yet as the issues have not been framed till date.

9. From the records, it is evident that the fact w.r.t. execution of the sale deed came to the notice of the plaintiff only after defendants filed



written statement. Resultantly, the plaintiff moved application seeking amendment in the plaint as well as in the prayer clause.

10. Trite it is that every amendment made in the prayer clause does not amount to alteration in the nature of the suit. Reliance can be placed upon law laid down by the Apex Court in the case of ‘**Rajesh Kumar Aggarwal and others vs. K.K. Modi and others**’, (2006) 4 SCC 385 wherein it was held as under:

12.

This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

14. Order 6 Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

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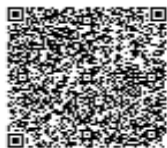


15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

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11. Keeping in view the aforesaid fact and especially in view of the fact that the trial has not yet commenced and that the Trial Court found the amendment sought was necessary for proper adjudication of the case in hand, this Court does not find any reason to interfere in the instant revision petition. Consequently, the same is ordered to be dismissed.

August 29, 2024
Dpr

(Pankaj Jain)
Judge

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