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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5714-2024
Date of decision : 15.10.2024

Raj Pal and another

... Petitioners

Versus

Bhopal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Rajesh Bansal, Advocate
for the petitioners.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 02.09.2024 (Annexure P-1) passed by the Additional Civil Judge (Sr.Div.), Guhla, District Kaithal in CIS no.CS/347/2017 dated 21.09.2017 titled as “Bhopal Singh vs. Kamla Devi and others” pending for 09.10.2024 whereby the application dated 03.04.2024 (Annexure P-5) under Order 6 Rule 17 CPC filed by respondent no.1-plaintiff for amendment of plaint has been allowed.
2. Brief facts of the present case are that the plaintiff-respondent no.1 had filed a suit for declaration, possession and permanent injunction with respect to the suit property which was stated to be a shop i.e., SCF booth no.1 situated at Chhoti Mandi, Opposite Tau Devi Lal Park, Cheeka, Tehsil Guhla, District Kaithal, on the basis of registered sale deed dated

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19.02.2014, which has been executed by defendants no.4 and 5. It was the case of the plaintiff in the plaint that previously defendant no.1, who is the mother of the petitioners (defendants no.2 and 3), was the owner of the suit property as mentioned in the paragraph 1 of the plaint by virtue of registered sale deeds dated 02.12.1985 and 06.03.1987 and that the said defendant no.1 gave the suit property to defendants no.4 and 5 in a family settlement and suffered a Civil Court decree dated 08.05.1993 passed in Civil Suit no.184/1992 in favour of defendants no.4 and 5. It was also averred that defendant no.1 had challenged the said decree dated 08.05.1993 by filing a civil suit no.595 of 1996 which though initially was decreed but the Civil Appeal filed by defendants no.4 and 5 against the judgment and decree of the trial Court dated 31.10.2001 was accepted and the Ist Appellate Court set aside the judgment and decree dated 31.10.2001 vide judgment and decree dated 20.05.2005.

3. It was further pleaded that defendant no.1 had filed regular second appeal no.3046 of 2005 before the High Court and the same was dismissed vide judgment dated 22.02.2007 and thus, defendants no.4 and 5 were held to be owners of the suit property in question and had right to sell the property which had been sold by them to the plaintiff-respondent no.1 vide registered sale deed dated 19.02.2014. It was further pleaded that the actual physical possession of the property was retained with defendants no.1 to 3 and the said possession was illegal and that defendant no.1 had suffered a decree dated 14.02.2017 in favour of the petitioners who were defendants no.2 and 3 in the main suit and were the sons of defendant no.1 and



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accordingly, the plaintiff had to file a suit for declaration challenging the said judgment and decree dated 14.02.2017 on the ground of the same being collusive and fraud and being illegal and not binding on the rights of the plaintiff. Separate written statements were filed in the said suit by defendant no.1 and defendants no.2 and 3 although they are mother and sons.

4. An application for amendment of the plaint was filed by the plaintiff on the grounds that after concluding the arguments of the case, the defendants had produced a photocopy of the sale deed dated 02.12.1985 and as per the said sale deed, the size of the plot in question was measuring 12½ feet x 17¼ feet (24.22 square yards approximately) but the earlier decree dated 08.05.1993 suffered by defendant no.1 in favour of defendants no.4 and 5 was showing that the plot in question was measuring 10 feet x 20 feet (22.22 square yards) and the plaintiff had purchased the property which was the subject matter of judgment and decree dated 08.05.1993 which was 10 feet x 20 feet (22.22 square yards) and the said facts had come to the knowledge of the plaintiff only after filing of the copy of the sale deed dated 02.12.1985 and accordingly the plaintiff sought the following amendments:-

“1(a) That a plot measuring 12½ Feet x 17¼ Feet (24.22 square Yards approximately) Part of SCF booth no.1 bounded as under:-

<i>East</i>	<i>Sarak</i>
<i>West</i>	<i>Plot of Sant Ram Jindal</i>
<i>North</i>	<i>Plot of Sardara Ram</i>
<i>South</i>	<i>property of Payara Singh</i>

is situated with in limits of Municipal Committee Cheeka Tehsil Guhlu, which had been purchased by Smt. Kamla w/o



Baso Ram by the dint of sale deed bearing registration no.1231 dated 2.12.1985.

1(b) That Smt. Kamla w/o Baso Ram settled a plot measuring 10 Feet x 20 Feet (22.22 square Yards approximately) out of property mentioned in para no.1(a) above in favour of defendants no.4 and 5 on the basis of oral family settlement, which was latter on recognized in judgement and decree dated 8.5.1993.

Although judgement and decree dated 8.5.1993 has been passed regarding plot measuring 10 Feet x 20 Feet (22.22 square Yards approximately) but the same shall be considered to be a decree regarding an area equivalent to 22.22 square Yards approximately out of property mentioned in para no.1(a) of the plaint.

1(c) That although plaintiff purchased an area measuring 10 Feet x 20 Feet (22.22 square Yards approximately) vide sale deed dated 19.2.2014 from defendants no.4 and 5 but in the given circumstances the same shall be considered to the sale of share to the extent of 22.22 square Yards approximately out of property mentioned in para no.1(a) above.

1(d) That plaintiff wants the partition of the property mentioned in para no.1(a) of the plaint by metes and bounds.

20. That the cause of action for the suit has arisen in the favour of plaintiff and against the defendant on 06.09.2017, the date of final refusal by the defendants to admit the claim of the plaintiff, and is arising daily and cause of action for the relief of partition is continuing one and as such, the learned Court has got jurisdiction to try and entertain the present suit.

21. That the value of the suit for the purpose of court fee and jurisdiction is Rs.7,00,000/-.

A court fee of Rs.42,300/- has already been affixed.

22 (a) That in the given circumstances above if relief mentioned in para no.22 of the plaint cannot be granted in that



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eventuality a decree for separate possession of property measuring 22.22 square Yards approximately out of property mentioned in para no.1(a) above i.e. share of plaintiff by partitioning the property mentioned in para no.1 (a) above by metes & bounds be passed with costs in favour of plaintiff and against the defendants.

Or

in the alternative a decree for joint possession of property mentioned in para no.1 above out of property mentioned in para no.1 (a) above be passed in favour of plaintiff and against the defendants.”

In the said application, it was specifically stated that the subject matter of the judgment and decree dated 08.05.1993, 31.10.2001, 20.05.2005 and 22.02.2007 i.e., in the RSA decided by this Court, between defendant no.1 and defendants no.4 and 5, was one and the same and it was the said property which was purchased by the plaintiff by virtue of sale deed dated 19.02.2014 and that no one had challenged the identity of the property in the case. It was further averred that the contesting defendants had filed objections in the application under Section 144 CPC which were dismissed vide order dated 31.05.2016 and even in the same, the contesting defendants including the petitioners never raised objection regarding identity of the property.

5. A reply was filed to the said application. The trial Court vide order dated 02.09.2024 had allowed the said application under Order 6 Rule 17 CPC and while allowing the said application, it was observed that the plaintiff was seeking amendment in the plaint for correction of dimensions of the suit property as well as for seeking an additional prayer for partition

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of the suit property as the suit was initially filed for possession with respect to the shop having dimensions 10 x 20 feet (22.22 square yards) and there was no dispute in any of the earlier rounds of litigation and it is only when the photocopy of the sale deed was produced at the time of final arguments that it was revealed that dimensions of the suit property were 12½ feet x 17¼ feet (24.22 square yards). The said sale deed was not formally tendered into evidence and was only produced by the petitioners at the time of arguments and it was in view of the same that the amendment was necessary for the proper and final adjudication of the case. It was further observed that the location of the property mentioned in the sale deed matched with the one mentioned in the plaint and thus, it was established that the property mentioned in the sale deed was the same property which was mentioned in the plaint but with different dimensions and thus, it became necessary to incorporate the correct dimensions in the plaint and that since the plaintiff had purchased a part of the property described in the sale deed dated 02.12.1985, thus, it was necessary to seek partition as the plaintiff was not the owner of the entire suit property.

6. The arguments raised on behalf of the defendants-petitioners to the effect that the application was time barred was rejected on the ground that a partition suit can be filed at any stage as there is a recurring cause of action. Even the argument with respect to prior knowledge of the plaintiff qua correct dimensions of suit property was also rejected as in the earlier round of litigation, there was no issue with respect to the dimensions of the suit property and it is only when the sale deed was formally tendered into

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evidence at the time of arguments that the plaintiff learnt about the dimensions and had immediately filed the application for amendment. Reliance was placed upon various judgments of the Hon'ble Supreme Court in which it was observed that the amendment could be allowed at any stage and the Court should not adopt a hypertechnical view and the amendments which avoid multiplicity of litigation and are necessary should be allowed. It was observed that in case the application is not allowed, then the plaintiff would have to go through another round of litigation qua the suit property for which he has been litigating since the year 1993 and further in case the said amendment is not allowed, the entire purpose of filing the suit by the plaintiff would be defeated. It is the said order which has been challenged before this Court.

7. Learned counsel for the petitioners has submitted that the amendment would change the nature of the suit as initially the suit was filed for declaration, possession and permanent injunction, whereas the present suit would be a suit for partition, which is not permissible. It is further submitted that the plaintiff in his plaint in paragraph 4 made a specific reference to the sale deed dated 02.12.1985 and it was averred therein that defendant no.1 was owner of the suit property by virtue of the said sale deed and thus, the plaintiff should have seen the said sale deed at the time of filing of the suit and thus, he was in deemed knowledge of the said fact which was sought to be incorporated at a belated stage. It is submitted that thus, it could not be stated that the plaintiff had acted with due diligence.



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8. The arguments raised by the learned counsel for the petitioners are meritless and deserve to be rejected.

9. A Coordinate Bench of this Court in judgment dated 19.04.2017 passed in **CR-7797-2014** titled as **“Manohar Lal vs. Jai Parkash”** had allowed the amendment at the stage of rebuttal evidence / arguments. While allowing the said amendment, it was observed by the Coordinate Bench of this Court that it was a settled principle of law that under Order 6 Rule 17 CPC, the amendment is to be allowed where it is necessary for the purpose of determining the real question in controversy between the parties and that the rules of procedure are hand-maid of justice and technicalities are not to come in the way and the Courts are to adjudicate the case on the merits of the dispute. In the said case also, the dispute was with regard to area of the tenanted premises and the amendment was sought with respect to mentioning the correct area at the fag end of the trial. The Coordinate Bench of this Court had relied upon the judgment of a Three Judge Bench of the Hon'ble Supreme Court in **Sajjan Kumar vs. Ram Kishan** reported as **2005(13) SCC 89** and had observed that in the said case, the amendment of the plaint which was sought was with respect to the correct description of the suit property and was allowed even at a belated stage in order to avoid complications. The relevant portion of the said judgment is reproduced hereinbelow:-

*“9. Mr.Bahl is well justified to place reliance upon the judgment of the Three Judges Bench of the Apex Court in **Sajjan Kumar Vs. Ram Kishan 2005 (13) SCC 89** wherein amendment was allowed of the plaint where the correct*



*description of the suit premises was allowed on the ground that even if it was at a belated stage. **It was noticed in the said case that in order to avoid complications, the description of the suit premises needed to be corrected.** Similar are the facts herein and by not correcting the error would only lead to failure of justice between the parties. It is also pertinent to notice that by virtue of the amendment, even if the proceedings are delayed, the same would be to the detriment of the landlord and the tenant, as such, cannot object to this aspect.”*

10. In the present case also, as is apparent from the facts stated hereinabove, the amendment sought to be made is in view of the fact that the dimensions of the property mentioned in the sale deed are different from the dimensions which have been mentioned in the proceedings which have attained finality upto this Court in the earlier round between the defendant no.1 (mother of the petitioners) and defendants no.4 and 5, from whom the plaintiff as per his case has purchased the property. The amendment is necessitated in order to mention the correct dimensions and thus, the law laid down in the above said judgment would fully apply to the present case. Moreover, the delay caused on account of amendment would be to the detriment of the plaintiff inasmuch as it is his suit for possession, which is now suit for partition, which would stand delayed.

11. It is a matter of settled law that at the time of deciding the application for amendment under Order 6 Rule 17 CPC, the Court is not required to adjudicate the plea proposed and is primarily required to consider as to whether the amendments are necessary for determining the real question in controversy. Reference in this regard can be made to the



judgment of the Hon'ble Supreme Court of India in the case of *Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.* reported as *2006(2) RCR (Civil) 577*. The relevant portion of the said judgment is reproduced hereinbelow:-

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.

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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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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.

12. In the present case, the amendment is necessary for the proper and final adjudication of the case. It is the case of the plaintiff that he had

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purchased the suit property vide sale deed dated 19.02.2014 from defendants no.4 and 5 and that defendants no.4 and 5 had got the said property in a family settlement which was recognized by a Civil Court decree dated 08.05.1993 passed in Civil Suit no.184 of 1992 in their favour by defendant no.1, who is the mother of the petitioners. It has further come on record that the suit filed by defendant no.1 challenging the said decree dated 08.05.1993 has been dismissed upto the High Court and the ownership of defendants no.4 and 5 on the basis of decree dated 08.05.1993 has been upheld upto the High Court in RSA-3046-2005 decided on 22.02.2007. Thus, the defendants no.4 and 5 have been held to be owners and defendant no.1 who is the mother of the petitioners had lost her right in the property by virtue of decree dated 08.05.1993. Defendants no.4 and 5 have sold the property to the plaintiff vide registered sale deed dated 19.02.2014. The plaintiff in the present suit has challenged the subsequent decree suffered by defendant no.1 in favour of the present petitioners dated 14.02.2017 which as per the case of the plaintiff is collusive and not binding on him as the same has been suffered by the mother in favour of their children. It is the case of the plaintiff that in the entire litigation upto the High Court, there was no dispute with respect to the dimensions of the property and the dimension was stated to be 10 feet x 20 feet (22.22 square feet) and it is the said property which has been purchased by the plaintiff. It is only when the photocopy of the sale deed dated 02.12.1985 was produced by the petitioners at the time of arguments, that the aspect that the dimensions mentioned in the said sale deed were actually 12½ feet x 17¼

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feet (24.22 square yards approximately) came to the knowledge of the plaintiff and accordingly, the amendment was made which is relevant for the adjudication of the case.

13. The plaintiff would have bonafidely not seen the dimensions of the sale deed dated 02.12.1985 as he had purchased the property which was the suit property with respect to the civil court decree dated 08.05.1993, in which it is not disputed before this Court that the dimensions had been mentioned as 10 feet x 20 feet (22.22 square yards). Once it is the case of the petitioners also that as per the sale deed dated 02.12.1985 which was in favour of defendant no.1, the dimensions are 12½ feet x 17¼ feet (24.22 square yards) then it became necessary for the plaintiff to seek partition of the suit property as he could not seek possession of the entire property since it was learnt that he had purchased a part of the entire property. It has been correctly observed in the impugned order that in case the amendment is not allowed, then the same would lead to multiplicity of litigation and would defeat the entire purpose of the suit and the plaintiff would not be able to get an effective relief, although he has been pursuing the case since the year 2017. It has also been rightly observed that in the said circumstances it was necessary to seek partition.

14. Keeping in view the above said facts and circumstances, this Court finds that the impugned order is in accordance with law and deserves to be upheld and the present revision petition filed by the present petitioners being meritless deserves to be dismissed and is accordingly dismissed.

15. It is made clear that the observations made in the present order



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are only for the purpose of adjudicating the legality or otherwise of the impugned order and the trial Court would decide the case independently, in accordance with law.

(VIKAS BAHL)
JUDGE

October 15, 2024.
Davinder Kumar

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