

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.304

Case No. : CR No.6130 of 2023 (O&M)

Date of Decision : February 20, 2024

Tej Maan Singh

.... Petitioner

VS.

Lalita Grewal and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. R. S. Athwal, Advocate
for the petitioner.

Mr. Gursimran Singh Madaan, Advocate
for the respondent.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 13.07.2023 (Annexure P-1), passed by learned Civil Judge (Junior Division), Jalandhar (for brevity – Trial Court), whereby application under Order 6 Rule 17 read with Section 151 CPC (Annexure P-2), moved by the plaintiff/petitioner (hereinafter referred to as – the plaintiff), seeking amendment of plaint, has been dismissed.

2. The brief facts of the case are that plaintiff filed a suit for declaration to the effect that the plaintiff was owner of the land to the extent of half share in the estate left by Harbhajan Singh. When the suit was filed, the plaintiff was not aware that his father Harbhajan Singh had executed a Will dated 30.04.1996, duly registered in the office of Sub Registrar, vide document No.120 dated 30.04.1996. Accordingly, it was stated in the suit

that Harbhajan Singh had died intestate. The aforesaid Will was traced from the old documents. On coming to know about the said Will, the plaintiff immediately moved application under Order 6 Rule 17 read with Section 151 CPC (Annexure P-2) for amendment of the plaint, on the ground that the Will was recovered from the documents of Ranjit Singh, who was General Attorney of late Harbhajan Singh and there was not even an iota of doubt that the said Will had been created at that stage and introduced by the plaintiff. Had the said Will been in the knowledge of the plaintiff at the time of filing the suit, then there was no question of withholding the said document and the suit could have been filed on the basis of said Will.

3. It was further stated on behalf of the plaintiff that the learned Trial Court, vide order dated 19.04.2023, allowed two applications filed by the defendant/respondent (hereinafter referred to as – the defendant). The first application was allowed qua relief for amendment of written statement (Annexure P-3) and the second application was allowed for amendment of counter-claim (Annexure P-4).

4. Learned counsel has further apprised this Court that vide order dated 20.09.2023 (Annexure P-5), the learned Trial Court has also allowed the defendant's application for rejection of written statement to the amended counter-claim and also replication to amended written statement, filed by the plaintiff. In this application, the plaintiff had filed the aforesaid written statement and replication on the basis of registered Will dated 30.04.1996 on the ground that since the application filed by the plaintiff, for amendment of plaint, had been declined, he was not entitled to raise the said plea in written statement or replication.

5. Learned counsel for the plaintiff has further argued that from the orders passed by learned Trial Court, it is clear that the applications filed by the defendant have been allowed and for this purpose, the Court has relied upon photocopy of unregistered Will dated 18.12.2000, whereas defendant did not even produce the alleged original Will dated 18.12.2000. It clearly shows that the learned Trial Court had already formed its opinion about the final outcome of the case and the original registered Will dated 30.04.1996 has not been taken into consideration. It has, thus, been prayed that the impugned order dated 13.07.2023 is liable to be set aside.

6. It is further argued by learned counsel for the plaintiff that the Court can allow any party to amend the pleadings at any stage of proceedings for the purpose of determining real controversy between the parties if the prayer is *bona fide* one and there is no serious injustice or irreparable loss caused to the other side. It is further argued that purpose of allowing amendment is to minimize the litigation and for promoting the ends of justice. The proposed amendment is necessary for just decision of the case.

7. On the other hand, learned counsel for the defendant has vehemently argued that the case in question is pending since 2009 and trial of the case is not yet completed. The entire case is based upon the averment that father of the plaintiff namely Harbhajan Singh had died intestate. Since the year 2009, the alleged Will dated 30.04.1996 has not seen the light of the day, even during the pendency of other litigation between the parties. Now, at the fag end of the case, when even defendant is at the verge of concluding her evidence, the plaintiff is trying to set up a totally new case, which is in

contradiction to his earlier case. As such, his prayer cannot be allowed as the same would result into a *de novo* trial, which is not permissible under the law. There had been several rounds of litigation between the parties and plea of the alleged Will has never been taken earlier by the plaintiff.

8. I have heard submissions made by learned counsel for the parties and perused the case record.

9. Recently, in the case of Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported as 2022 AIR (Supreme Court) 4256, the law of amendment has been summed up as under :-

“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 negatived.*
- (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 pin-pointedly 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).”

10. It is true that before the amendment is allowed, the Court should satisfy itself whether such an amendment is necessary for determining the real controversy between the parties. The Court is required to weigh the prejudice or injustice, which would be caused to the other side. If that party can be compensated with costs, then there is no harm in allowing the amendment but if an irreparable loss is going to be caused to the other side, then such an amendment cannot be allowed. The Court should not refuse bona fide and legitimate amendment and at the same time, it should not allow mala fide or dishonest amendment. If there was suit on intended cause of action but is barred by limitation on the date of filing of application, such amendments should be rejected. If amendment is necessary for just decision of the case in order to do justice between the parties, then such amendment is necessary to be allowed, even after commencement of the trial.

11. No doubt, by act of the plaintiff, the trial of the case has been delayed and the plaintiff has moved the application in question at a belated stage, posing hardship to the defendant but that cannot be considered as a ground to reject the application. The plaintiff wants to rely on the Will executed by his father and same was got registered at that time. The plaintiff was not to gain anything by withholding the Will. The suit is filed for claiming inheritance by the plaintiff. The proposed amendment would neither change nature of the case nor cause of action. The plaintiff can be burdened with heavy costs.

12. In the light of the above discussion, this revision petition is

allowed. Application for amendment of plaint, moved by the plaintiff, is hereby allowed, subject to payment of Rs.30,000/- as costs, to be paid to defendant.

13. The revision petition stands allowed in the aforesaid terms. Parties are directed to appear through their counsel before the learned Trial Court on 01.04.2024.

14. Pending applications, if any, shall stand disposed of along with this judgment.

February 20, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.