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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-5919-2022**

**Date of decision : 21.11.2024**

MAN SINGH CHAUHAN ALIAS MAN SINGH AND ORS. ....Petitioners

Versus

BHANWAR SINGH AND ORS.

...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Abhilaksh Grover, Advocate  
for the petitioners.

Ms. Rashmi Shahrawat, Advocate  
for respondents No.1, 2 and 3.

**PANKAJ JAIN, J. (ORAL)**

Defendants are in revision aggrieved of order dated 26<sup>th</sup> of September, 2022 whereby the amendments sought by the plaintiffs in the plaint stands allowed.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the defendants and the respondents as the plaintiffs.

3. Plaintiffs filed suit for declaration claiming themselves to be the legal representatives of Sh. Nihal Singh, their mother namely Smt. Saroj being his daughter and thus entitled to his estate. The plaintiffs sought decree of declaration to the effect that Mutation No.2697 dated 17<sup>th</sup> of



January, 1987 sanctioned in favour of the defendants is wrong, illegal, null and void, inoperative and not binding on the rights of the plaintiffs. Further sought decree of permanent injunction against the defendants restraining them from interfering in the peaceful possession of the plaintiffs and from dispossessing them forcibly and illegally from the suit land and further from alienating the suit land.

4. By way of proposed amendment, the plaintiffs seek to amend the plaint incorporating following amendments:

- a. That words “mother of the plaintiffs” requires to be written under words “Sarla” in pedigree table duly shown in para no.1 of the plaint.
- b. That word "co-" is required to be prefixed before the words "owner in possession of agricultural land" in paragraph no. 2 of the plaint.
- c. Besides it, words "to the extent of ½ share i.e. 128 Kanal 9 Marla out of aforesaid total land ad-" between words "187/203" and "measuring 257 Kanal 19 Marla" in the same para no. 2 of the plaint.
- d. That following line requires addition in sub-para i) of prayer clause of the plaint and after words ".....declaration to the effect that": -

"plaintiffs are co-owners in possession to the extent of 1/24th share each in the share of abovesaid Nihal Chand duly stated in para no. 2 above and consequently,"

- e. That the figure "1" is required to be replaced with figure "2" in sub-para ii) of "Prayer" clause of the plaint.”

5. The aforesaid application filed by the plaintiffs was resisted by the defendants claiming that the amendments sought lack *bona fide*. It was



further claimed that the typographical/clerical mistakes claimed in the application in fact go to the roots of the suit and have effect of changing the nature of the suit. The application filed by the plaintiffs stands allowed by the Additional Civil Judge holding that the same are imperative for the just decision of the case on merits.

6. Mr. Abhilaksh Grover, Advocate for the petitioners while assailing the impugned order submits that the Trial Court failed to appreciate that the amendment made in the prayer clause shall lead to alteration in the nature of the suit. His main grievance is against the amendment allowed to be made in the prayer clause. He asserts that the suit was filed by the plaintiffs claiming themselves to be owner in possession and now at the stage of leading rebuttal evidence, they have been allowed to alter the nature of the suit. He relies upon law laid down by Apex Court in the case of **Ajendraprasadji N. Pande and another vs. Swami Keshavprakeshdasji N. & others, (2006) 12 SCC 1** and **Usha Balashaheb and others vs. Kiran Appaso Swami and others, (2007) 5 SCC 602.**

7. Per contra, counsel representing the respondents/plaintiffs submits that from the perusal of the plaint as a whole, it is evident that the amendment sought was owing to the fact that some typographic mistakes crept in the plaint, which need to be corrected by way of amendment. She further submits that merely for the reason that amendment has been made in the prayer clause, the same will not alter the nature of the suit.



8. I have heard counsel for the parties and have gone through records of the case.

9. It is matter of record that the amendment has been sought in the plaint when the matter was fixed for rebuttal evidence and arguments. Thus, the amendment sought has to be tested on the touchstone of the proviso appended to Order VI Rule 17 CPC, which reads as under:

**“Order VI**

**17. Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall 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 before the commencement of trial.”

10. The provision has been elaborately considered and explained by Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2022 AIR (Supreme Court) 4256** observing 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)

11. Further w.r.t. amendment in the prayer clause leading to the alteration of the suit has been elaborately explained in the case of **Rajesh Kumar Aggarwal and others vs. K.K. Modi and others**, (2006) 4 SCC 385 observing 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.

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.”

12. From the tone and tenore of the plaint, it is discernible that the plaintiffs in Para No.6 claimed themselves to be one of the legal heirs of Nihal Singh whose estate is in dispute. In the prayer clause also the plaintiffs nowhere claimed decree of declaration to the effect that they were absolute owners of the suit property. Thus, in the considered opinion of this Court, the amendment sought is merely explanatory and clarificatory in the nature which has no effect of altering the nature of the suit. Trial Court allowed the amendment(s) holding that the amendment sought was imperative for the just decision of the case on merits. Thus, Trial Court having rightly exercised its discretion as per law, this Court does not find

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any reason to exercise jurisdiction under Article 227 of the Constitution of India.

13. Resultantly, the instant revision is dismissed.

November 21, 2024

(Pankaj Jain)  
Judge

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No