

CR-7423-2024,
CR-7469-2024 and
CR-7494-2024

[1]

2024:PHHC:171711



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CR-7423-2024
Date of decision: 20.12.2024

Umeshpal Jain
...Petitioner

Versus

Mahinder Pal Jain
...Respondent

2. CR-7469-2024
Date of decision: 20.12.2024

Umeshpal Jain
...Petitioner

Versus

Mahinder Pal Jain and others
...Respondents

3. CR-7494-2024
Date of decision: 20.12.2024

Umeshpal Jain
...Petitioner

Versus

Mahinder Pal Jain
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Hitesh Ghai, Advocate for the petitioner.
(In all three revision petitions)



VIKAS BAHL, J. (ORAL)

1. This order will dispose of three revision petitions. First Civil Revision i.e., CR-7423-2024 has been filed by the petitioner-Umeshpal Jain against Mahinder Pal Jain challenging the order dated 04.11.2024 (Annexure P-12) vide which an application dated 27.05.2024 (Annexure P-10) filed by the petitioner for amendment of plaint under Order 6 Rule 17 CPC was dismissed in civil suit bearing No.CS/7032/2019 titled as “Umeshpal Jain Vs. Mahinder Pal Jain”. CR-7469-2024 has been filed by the same petitioner i.e., Umeshpal Jain against Mahinder Pal Jain and three other respondents in which challenge is to the order dated 04.11.2024 (Annexure P-12) vide which an application dated 27.05.2024 (Annexure P-10) for amendment of plaint under Order 6 Rule 17 CPC was dismissed in civil suit bearing No.CS/6330/2019 titled as “Umeshpal Jain Vs. Mahinder Pal Jain and others”. CR-7494-2024 has been filed by Umeshpal Jain against Mahinder Pal Jain in which challenge is to the same order dated 04.11.2024 (Annexure P-12) vide which an application dated 27.05.2024 filed by the petitioner under Order 6 Rule 17 CPC (Annexure P-10) for amendment of written statement to the counter claim bearing No.CS/9126/2019 titled as “Mahinder Pal Jain Vs. Umeshpal Jain” has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner had filed Civil Suit No.6330 of 2019 for permanent injunction restraining the defendants therein from interfering into the peaceful possession and enjoyment of the plaintiff and from dispossessing the plaintiff from a part of the house in question measuring 200 square yards on



the plea that the petitioner-plaintiff and defendant No.1-Mahinder Pal Jain were real brothers and that the plaintiff was residing on the first floor of the property in question and defendant No.1 was also residing in the said property on the ground floor and the mother of the plaintiff had died on 01.07.2019 leaving behind the plaintiff and defendant No.1 as her legal heirs. It is submitted that it was further the case of the petitioner that the defendants were trying to forcibly dispossess the petitioner and thus, the prayer for injunction was made. It is argued that the written statement was filed in the said suit by defendant No.1 and other defendants were proceeded against ex-parte.

3. It is submitted that subsequently, the petitioner had filed civil suit No.7032 of 2019 for declaration to the effect that the petitioner is joint owner in possession to the extent of half share of the house in question measuring 200 square yards and had further prayed for declaration to the effect that the sale deed dated 28.03.2006 registered with the office of Sub-Registrar, Ludhiana executed by his mother Santosh Kumari in favour of defendant-Mahinder Pal Jain was illegal, null and void. It is submitted that in the said suit, the plea raised by the plaintiff was that the suit property was purchased with the funds of the father of the plaintiff in the name of the mother. It is argued that in the said case, a counter claim was filed by Mahinder Pal Jain for possession of two bedrooms, one toilet, two stores, kitchen, lobby, latrine, open spaces, two galleries and staircases and the stand of the said Mahinder Pal Jain (in both the cases) was to the effect that the property was self-acquired property of the mother and the sale deed dated 28.03.2006 was legal and valid. It is submitted that in reply to the said



counter claim, the petitioner had reiterated the fact that the property was purchased from the funds of the father of the plaintiff, which the mother had received after the death of the father. It is argued that both the said cases were consolidated vide order dated 06.05.2023 and the issues were framed on 26.05.2023 and thereafter, the petitioner had moved an application for amendment under Order 6 Rule 17 read with Section 151 CPC for carrying out the amendment to the effect that the petitioner-plaintiff had contributed an amount of Rs.3,50,000/- on account of purchase of the house in question. It is submitted that the details of the contribution made by the petitioner were given in the said amendment application.

4. It is argued that by virtue of the said amendment, the petitioner had tried to elaborate his erstwhile plea and that the said amendment was necessary for the proper adjudication of the case. It is further submitted that the said application had been rejected by the trial Court vide order dated 04.11.2024. It is submitted that similar applications for amendment have also been filed in the suit for permanent injunction as well as in the reply to the counter claim but the trial Court vide three separate orders of even date i.e., dated 04.11.2024 has rejected the said applications illegally and all the three orders deserve to be set aside and the applications of the petitioner being meritorious, deserve to be allowed. It is submitted that in case the amendment is allowed, the same would help the Court in proper adjudication of the case. In support of his arguments, learned counsel for the petitioner has referred to the law laid down by the Coordinate Bench of this Court in case titled as **Gurindesh Sandhu and others Vs. Kirron Kher and others** reported as **2023(3) PLR 591**.



5. This Court has heard learned counsel for the petitioner and has perused the paper book of all the three cases and finds that the impugned order in all the three revision petitions is in accordance with law and deserves to be upheld and the three revision petitions filed, deserve to be dismissed being meritless for the reasons stated hereinafter.

6. It is not in dispute that the present petitioner-plaintiff had first filed civil suit No.6330 of 2019 for permanent injunction restraining the defendants which included defendant No.1-Mahinder Pal Jain from dispossessing the petitioner/plaintiff from the house in question measuring 200 square yards. The plea raised in the said case was that the mother of the plaintiff was the owner of the house in question measuring 200 square yards vide registered sale deed dated 28.09.2001 and plaintiff-petitioner and defendant No.1-Mahinder Pal Jain both were residing in the said house and after the death of mother of the petitioner on 01.07.2019, defendant No.1-Mahinder Pal Jain along with other defendants threatened the petitioner from forcible dispossession and thus, suit for injunction was filed. In the written statement filed on behalf of defendant No.1 in the said suit, a plea was taken that the mother of the plaintiff and defendant No.1, who was a JBT teacher was the owner of the house in question in her own right and defendant No.1-Mahinder Pal Jain had become the owner of the same vide registered sale deed dated 28.03.2006 registered with the Joint Sub Registrar, Ludhiana.

7. It is further not in dispute that the petitioner thereafter instituted civil suit No.7032 of 2019 against Mahinder Pal Jain seeking declaration to the effect that he is joint owner in possession to the extent of half share of



the house in question and further seeking declaration to the effect that the sale deed dated 28.03.2006 registered with the office of Sub-Registrar, Ludhiana, vide which Smt. Santosh Kumari had sold the house in question to the said defendant-Mahinder Pal Jain, was illegal and against law. The second suit was based on the plea that the purchase of the property in question was made in the name of mother of the plaintiff namely Smt. Santosh Kumari from the funds which she got after the father of the plaintiff and defendant-Mahinder Pal Jain had died on 29.03.1988, while in service. There was no plea in the said plaint to the effect that the plaintiff-petitioner had also contributed any amount for the purchase of the said property. In the written statement filed by the defendant, several objections were taken including objections that the suit was barred under Order 2 Rule 2 CPC and was also barred by limitation inasmuch as the sale deed of the year 2006 was sought to be challenged in the year 2019. Further objection taken was that the suit was barred under Section 4 of the Benami Transactions (Prohibition) Act. On merits, it was pleaded that the property was purchased by the mother of the plaintiff and defendant No.1 vide registered sale deed dated 28.09.2001 from her own funds and it was also highlighted that she was a JBT teacher and that the said property was not purchased from the funds of father of the plaintiff. The defendant-Mahinder Pal Jain also filed a counter claim for possession of a part of the property which was in possession of the present petitioner. In reply to this counter claim, the present petitioner had reiterated the plea that the funds for the purchase of the said property were received by her on account of the death of the father of the plaintiff.



8. Admittedly, civil suits and counter claim were consolidated vide order dated 06.05.2023 and the issues in the consolidated cases were framed on 26.05.2023 (Annexure P-9). One witness of the plaintiff was examined and partly cross-examined and thus, the trial had commenced. After the trial had commenced, three applications were moved by the petitioner for amendment of the plaint in both the cases and the written statement in the counter claim and the primary plea taken in the said amendment applications was that the petitioner/plaintiff-Umeshpal Jain had also contributed an amount on account of purchase of the house in question. The said applications were opposed by the respondent-Mahinder Pal Jain and it was pointed out that the same had been moved after the issues had been framed and thus, the said amendment was hit by the proviso to Order 6 Rule 17 CPC. It was further stated that the amendment sought was contradictory and inconsistent and the pleas which were sought to be raised were false and there was no prima facie material to support the same.

9. The trial Court, vide three separate orders dated 04.11.2024, dismissed all the three applications and while dismissing the said applications, observed that the pleas taken by the petitioner were contradictory and the petitioner was seeking to introduce an entirely new case which was not permissible in law. It was further observed that there was no due diligence in seeking the amendment and the plea raised by the petitioner in the applications for amendment to the effect that he was a layman and could not convey all the facts to the previous counsel, was held to be not constituting “due diligence”.

10. The orders passed by the trial Court are in accordance with law



and deserve to be upheld.

11. The Hon'ble Supreme Court in the case of *Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others*, reported as *2006(12) SCC 1*, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended), the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.

12. In the present case, it is not disputed that the issues in both the civil suits which have been consolidated have been framed on 26.05.2023 and one of the witness had already been examined and partly cross-examined before the applications for amendment of pleadings were filed by the petitioner. It is also not disputed before this Court that all the averments which are sought to be made in the said amendment applications are with respect to the facts which were in the knowledge of the petitioner prior to filing of the original plaint/written statement in the counter claim. The only reason given for not incorporating the said pleas in the applications was that the petitioner is a layman and could not convey all the facts to the previous counsel. A perusal of proviso to Order 6 Rule 17 CPC would show that it has been mandated 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. In the present case, the plea taken would clearly show that there was no due diligence on the part of the petitioner in raising the said plea and thus, the amendment sought is hit by the proviso to Order



6 Rule 17 CPC.

13. Additionally, it would be relevant to note that the plea sought to be raised by the petitioner in the amendment is contradictory to the plea raised in the original plaint/written statement. In the suit for permanent injunction, plea raised by the petitioner was that the mother of the plaintiff was owner of the property in question vide registered sale deed dated 28.09.2001. After having found that the mother had executed a sale deed dated 28.03.2006 in favour of Mahinder Pal Jain, the second suit was filed by the petitioner taking a different plea from that taken in the suit for permanent injunction and it was averred in the same that the property was purchased in the name of the mother from the funds which she had got on account of the death of the father of the plaintiff and the defendant. In both the plaints or in the written statement to the counter claim, no such plea was taken that any amount was provided by the petitioner for the said house. Now, presently, the plea sought to be raised is that the petitioner also had provided the funds for the purchase of the house which clearly is in contradiction to the earlier plea taken and it cannot be stated that the said facts were not known to the petitioner at the time of filing of the first and the second suit and the petitioner is clearly trying to wriggle out of the earlier pleadings made, which is not permissible. Thus, on the said score also, the amendment sought cannot be allowed. Thirdly, it would be relevant to note that the petitioner/plaintiff is apparently in possession of a part of the house and the defendants have filed a counter claim for possession from the petitioner and thus, every endeavour is being made by the petitioner to delay the proceedings with respect to the suits which have



been instituted in the year 2019. Thus, the impugned orders are in accordance with law and deserve to be upheld.

14. The judgment passed in the case of *Gurindesh Sandhu and others*, (Supra) relied upon by learned counsel for the petitioner does not even remotely further the case of the petitioner. In the abovesaid judgment, the facts which were sought to be incorporated with respect to registered Will executed by the owner in the said case i.e., Lieutenant Col. Thakur Singh, had arisen during the pendency of the suit and the same were subsequent events and the Coordinate Bench of this Court had observed that instead of parties having to file independent and separate suit, it was appropriate that the amendment be allowed with respect to the said subsequent event so that multiplicity of litigation could be avoided. In the present case, admittedly, there is no subsequent event which has been pointed out before this Court and thus, the said judgment is not even remotely applicable in the present case.

15. Keeping in view the abovesaid facts and circumstances, all the impugned orders passed in the three cases are in accordance with law, deserve to be upheld and revision petitions being meritless, deserve to be dismissed and are accordingly, dismissed.

20.12.2024
Pawan

(VIKAS BAHL)
JUDGE

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