

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

Reserved on 10th of December, 2024
Pronounced on 16th of January, 2025

CR No.118 of 2023 (O&M)

Malkiat Singh and othersPetitioners

Versus

Mohan Lal (deceased) through LR's and others ...Respondents

CR No.127 of 2023 (O&M)

Malkiat Singh and othersPetitioners

Versus

Mohan Lal (deceased) through LR's and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Abhay Gupta, Advocate
for the petitioners.

Mr. Manthan Pathania, Advocate for
Mr. B.S. Bajwa, Advocate
for respondent No.3.

PANKAJ JAIN, J.

These two revision petitions arise out of the same *lis*.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioners No.1 & 2 as plaintiffs No.4 &

5 and petitioner No.3 as plaintiff No.3 (collectively hereafter referred to as 'the plaintiffs') and respondents No.1 to 3 as defendants No.1 to 3.

3. Plaintiffs filed two applications. The first application was filed under **Order 6 Rule 17 CPC** seeking amendment in the plaint to plead subsequent events and second application was filed under **Order 1 Rule 10 CPC** seeking impleadment of additional defendants. Both the applications stand rejected by the Trial Court.

4. Plaintiffs/petitioners filed suit for declaration challenging gift deed executed by Mohinder Kaur wife of Lachhman Singh in favour of the defendants No.1 to 3 and claimed themselves to be trustees on the basis of registered Will dated 24.06.2004 executed by Lachhman Singh. Plaintiffs further sought decree of permanent injunction seeking restrain against defendants No.1 to 3 from creating any third party rights in the suit property. The suit was accompanied by an application under Order 39 Rule 1 & 2 CPC seeking temporary injunction against defendants No.1 to 3 from alienating the suit property in any manner and from creating any third party right. Temporary injunction was granted in favour of the plaintiffs vide order dated 04.11.2009.

5. Plaintiffs filed application under Order 6 Rule 17 CPC. As per plaintiffs suit property comprises of four shops. In one shop Harjit Singh son of Rai Singh was in possession as tenant since time of Lachhman Singh. Shop adjoining the shop in possession of Harjit Singh, was lying vacant after the same was vacated by Tarsem Kumar Sharma. The two other shops lying

on the eastern side of the shop in possession of Harjit Singh, was also lying vacant. Residential portion behind the shops was in occupation of Mohinder Kaur widow of Lachhman Singh. After her death, the same was lying locked and vacant. Plaintiffs now have come to know that Harjit Singh himself migrated abroad and left the possession of the shop to his son Jatinder Singh. Jatinder Singh in collusion with defendants illegally removed the wall between the adjoining shops and converted two shops into one. Plaintiffs sought following amendment:

“8A That during the pendency of the present suit and by violating the injunction order dated 04/11/2009 in the month of July 2022 Jatinder Singh son of Harjit Singh son of Rai Singh resident of village Pal Majra, Tehsil Samrala, District Ludhiana in collusion with defendants no.2 and 3 and LRs of defendant no.1 forcibly and illegally removed the in between Wall of the shop under the tenancy of his father and the adjoining shop on the western end lying vacant and occupied the said western end shop by converting both the shops into one shop illegally and forcibly. Harjit Singh himself had went abroad and left the possession of the shop to his son Jatinder Singh. The said Jatinder Singh son of Harjit Singh in collusion with defendants no.2 and 3 and Lrs of defendant no.1 have also recently forcibly and illegally occupied the residential portion situated behind the shops and also made material alterations. The said material alterations will be verified by appointing local commissioner through the court. Similarly Kamikkar Singh son of Jarnail Singh resident of Samrala after his cross examination as DW5 on 13/09/2022 has also in collusion and in conspiracy with the defendants illegally and forcibly occupied the eastern shops by making material alterations in it by way of reward of his false evidence given in the court to help the defendants no.1 to 3.

The above said illegal acts of the defendants no.2 and 3 and Lrs of defendant no.1 in collusion with the above said Jatinder Singh and Kamikkar Singh have provided the cause of action to the plaintiffs to seek the relief of possession.”

6. Further amendment was sought in Para No.8 of the plaint which reads as under :

“i) That at the end of para no.8 of the plaint following is to be added:-

“Moreover as per the document dated 09/12/2013 and copy of order dated 05/02/2014 passed by the Court of Commissioner Patiala as produced by the defendants no.1 to 3 on the file it is clearly made out that even the defendants no.1 to 3 have also left and abandoned their claim under the gift deed dated 31/12/2008 in question as the revision petition filed by the defendants no.1 to 3 against the orders of the lower on the basis of above said gift deed in favour of defendants no.1 to 3 was also withdrawn on 05/02/2014 in view of the execution of document/family compromise dated 09/12/2013.”

7. Along with the application filed under Order 6 Rule 17 CPC, plaintiffs filed application under Order 1 Rule 10 CPC seeking impleadment of Jatinder Singh @ Jyoti son of Harjit Singh and Kamikkar Singh son of Jarnail Singh, the two tenants as parties to the *lis*. Trial Court vide impugned orders has dismissed both the applications holding that the amendment of the plaint is being sought after framing of issues and after the plaintiffs have closed their evidence in affirmative. The proposed

amendment is not necessary and shall result in *de novo* trial and the same cannot be permitted.

8. In the other revision petition, the application filed under Order 1 Rule 10 CPC has been dismissed holding that the facts pleaded by the plaintiffs in the application, provide separate cause of action to the applicants/plaintiffs and the same is not necessary to effectually adjudicate the issues involved in the *lis*.

9. Counsel for the petitioners while assailing the impugned orders submits that the Trial Court misdirected itself in dismissing the applications. There is no complete bar to amendment of pleadings after framing of issues. It is mandatory for the Court to allow all amendments necessary for the purpose of determining the real question in controversy between the parties. Wherever cause of action arose during the pendency of the suit, amendment in the pleadings needs to be allowed. If the Court has come to the conclusion that the plaintiff is entitled to file a fresh suit, no reason has been assigned as to why the relief cannot be claimed by way of amendment in the instant suit to avoid multiplicity of the litigation.

10. Per contra, counsel for respondent No.3 submits that present amendment is nothing but a ploy to delay the suit and to conduct a *de novo* trial. A new tale is being added by way of amendment which has nothing to do with the title over the suit property. The issue relates to gift deed executed by Mohinder Kaur in favour of defendants and has nothing to do

with the possession of the property. He thus, submits that whosoever is held to be title-holder, will be entitled to proceed against the tenants in case there is any violation at their hands.

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

12. Before advertng to the merits of the impugned orders, it will be apt to peruse the prayer clause in the original plaint, which reads as under :

“It is, therefore, prayer that decree for declaration to the effect that alleged gift deed dated 31/12/2008, in favour of Mohan Lal, Amarjit and Mevi Pal, qua the shops and house which is shown as redi in the site plan attached and bounded as under:-

East:	Rasta
West :	Nirmal Singh
North:	Chandigarh Road
South:	Bhag Singh

Situated at Chandigarh Road Samrala, Near Bank of Baroda building and the same is shown as 7/41 share out of land measuring 2K-1M which is comprising in khewat no. 885, Rect no. 65, Killa no. 1/1, 1/20, as per jamabandi for the year 2005-2006 situated at Samrala, is illegal, nul, void, without consideration and result of fraud on the basis of registered will dated 24/06/2004 executed by deceased Lachhman Singh

AND

Declaring for the plaintiffs no.3 to 6 being absolute trustees/owners with possession of suit property on the basis of registered will dated 24/06/2004 executed by deceased Lachhman Singh

AND

Decree for permanent injunction restraining the defendant no.1 to 3 from alienating, mortgaging creating any type of charge or from

changing the nature of property four shops and house which is shown in the site plan and bounded as under:-

East: Rasta

West: Nirmal Singh

North: Chandigarh Road

South: Bhag Singh

Situated at Chandigarh Road, Samrala, Near Bank of Baroda Branch Samrala, may please be passed in favour of the plaintiff with costs against the defendants.”

13. It is evident that the plaintiffs have claimed themselves to be absolute trustees/owners in possession. Specific plea raised by the plaintiffs/petitioners in application seeking amendment of the plaint is w.r.t. subsequent events wherein the tenants after removing adjoining walls have come in possession of a part of the suit property. Further allegation is that the tenants, who are being sought to be impleaded as additional defendants by invoking Order 1 Rule 10 CPC have acted in connivance with the defendants, against whom the plaintiffs are fighting for possession.

14. Law w.r.t. amendment of pleadings has been elaborately laid down by the Supreme Court in the case of **‘Rajesh Kumar Aggarwal and others vs. K.K. Modi’**, (2006)4 SCC 385 observing as under:

“12. We have carefully gone through the relevant pleadings, annexures and the judgment rendered by the learned single Judge and of the learned Judges of the Division Bench of the High Court.

Order 6 Rule 17 of Civil Procedure Code reads thus :

"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."

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.

15. Apex Court further in the case of **‘Sampath Kumar vs. Ayyakannu and another’**, (2002) 7 SCC 559, observed as under:

“6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application

for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

8. In **Mst. Rukhmabai v. Lala Laxminarayan and others, AIR 1960 Supreme Court 335**, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. Order 6 Rule 17 of the Civil Procedure Code confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In

the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

16. Applying the aforesaid ratio of law to the facts of the present case, plaintiffs plead subsequent events which have necessitated amendment in the plaint. Evidently, the amendment sought shall not alter the nature of the suit. Once the Court finds that the plaintiffs have right to file a separate suit, endeavour ought to have been to avoid multiplicity of the proceedings. Thus, it is in the interest of the justice that the multiplicity of the litigation be curbed and the plaintiffs be allowed to agitate subsequent events leading to subsequent cause of action in the same *lis* and be allowed to amend their plaint.

17. As a consequence, the application filed by the plaintiffs under Order 6 Rule 17 CPC is ordered to be allowed. Impugned order dated 19.11.2022 (in CR No.127 of 2023) is ordered to be set aside.

18. As a natural corollary of the amendment sought in the plaint, application under Order 1 Rule 10 CPC seeking impleadment of additional defendants needs to be allowed. However, I may hastenly add here that the plaintiffs being master of their suit, are entitled to implead additional defendants. Since, plaintiffs claim themselves to be in possession of the suit property and by way of subsequent event, claim that the proposed defendants in connivance with the impleaded defendants have attained

wrongful possession of the suit property, additional defendants are necessary as well as proper to the present *lis*. Resultantly, application filed under Order 1 Rule 10 CPC is also ordered to be allowed. Impugned order dated 19.11.2022 (in CR No.118 of 2023) is hereby set aside.

19. As a sequel of the discussion held hereinabove, both the revision petitions are are allowed.
20. Pending application, if any, shall also stand disposed off.
21. A copy of this order be placed on the file of other connected case.

January 16, 2025		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No