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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2747-2018 (O&M)

Date of Decision : 19.11.2025

Prem Kumar

... Petitioner

Versus

Hanish Kumar and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Navneet Jindal, Advocate for the petitioner.

Mr. Mohd. Salim, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 11.04.2018 whereby application filed by the plaintiff-petitioner for amendment of the plaint has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner herein alongwith plaintiff No.2 i.e. respondent No.3 herein filed a suit for possession by way of partition by metes and bounds of half share of one house measuring 14' x 1400' as fully described in the plaint. It was the case set up by the plaintiff-petitioner that the plaintiffs had become owners of the house to the extent of half share and defendant-respondent Nos.1 and 2 had become owners also to the extent of half share by way of inheritance of the property of Jalor Chand and his wife, namely, Barmi Devi. It was further the case set up that Jalor Chand died in the year 1953 and his wife, namely,

Barmi Devi died in the year 2001 and after the death of Jalor Chand and Barmi Devi, their two children, namely, Ved Parkash and Satya Devi @ Neelam Rani had become owners to the extent of half share each. Ved Parkash also died on 30.01.2004 and his half share in the house had been inherited by defendant-respondent Nos.1 and 2 in equal shares. In the written statement filed by defendant-respondent Nos.1 and 2 it was simply stated that Ved Parkash never inherited the property. After the evidence of the parties had been closed, the plaintiff-petitioner came to know that defendant-respondent No.1 had transferred 1/4th share in the suit property in the name of his wife and minor child, which had been inherited by defendant-respondent Nos.1 and 2 after the death of Ved Parkash. Though the said transfer was made in the year 2012, however there was no mention of the same in the written statement and therefore the application for amendment of the plaint. Reply was filed to the said application. Vide the impugned order the application was dismissed on the ground that it would change the nature of the suit and that the evidence of the parties had been closed. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner filed the civil suit in the year 2014 and when the written statement was filed by defendant-respondent Nos.1 and 2, they did not mention that defendant-respondent No.1 had transferred 1/4th share of the suit property in favour of his wife and minor child. It is only when the said events came to notice of the plaintiff-petitioner that he immediately moved the application under Order VI Rule 17 of the Code of Civil Procedure, 1908. Learned counsel for the plaintiff-petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil)]**

851] to contend that the amendment is necessary for the Court to come to a decision and also in order to avoid the multiplicity of the litigation. Learned counsel for the plaintiff-petitioner has further contended that not only was the factum of the transfer not stated in the written statement, but the defendant-respondent Nos.1 and 2 also did not step into the witness-box hence the plaintiff-petitioner did not come to know of this secret arrangement between defendant No.1, his wife and the minor child.

4. *Per contra* learned counsel for defendant-respondent Nos.1 and 2 would contend that copy of the transfer deed was obtained by the plaintiff-petitioner on 15.07.2015 from the office of the Sub-Registrar and produced the same in the criminal case. However, the application was filed in 2018 for amendment of the plaint. Learned counsel for the plaintiff-petitioner in rebuttal has stated that copy of the transfer deed was obtained by one Pawan Kumar and not by the plaintiff-petitioner. It has further been pointed out that the applications were simultaneously moved in the civil case and the criminal case for placing on record the said copy of the transfer deed.

5 I have heard learned counsel for the parties.

6. Hon'ble Supreme Court in the case of **Sanjeev Builders Private Limited** (*supra*) has held 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 negated.

(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)”.

7. In the present case, in the written statement there was simpliciter denial that the property was ever inherited by Ved Parkash. There was no mention of any transfer having been affected by defendant-respondent No.1 in favour of his wife and minor child. The argument of learned counsel for defendant-respondent Nos.1 and 2 that the document was well within the

knowledge of the plaintiff-petitioner in the year 2015 deserves to be rejected in view of the fact that Ex.P6, which is a copy of the transfer deed, reveals that the same was obtained by one Pawan Kumar. Learned counsel for the plaintiff-petitioner has pointed out that the applications were filed by the plaintiff-petitioner in the criminal case as well as in the civil case the moment he came to know of the said transfer deed. Learned counsel for the plaintiff-petitioner would further contend that despite due diligence he could not have possibly known about the transfer deed as the same was not reflected in any record and the same was not to his knowledge. It is also to be seen that the defendant-respondent Nos.1 and 2 in their written statement did not mention the fact of the transfer deed. They also did not appear in the witness-box. Hence, there was no occasion for the plaintiff-petitioner to have known of the transfer.

8. In view of the above, the impugned order dated 11.04.2018 cannot be sustained and the same is accordingly set aside. Consequently, application for amendment is allowed.

9. Disposed off. Pending applications, if any, also stand disposed off.

19.11.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO