

(1971) 01 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 461 of 1970

Kalwant Singh and others

APPELLANT

Vs

Sher Singh and another

RESPONDENT

Date of Decision : 22-01-1971

Acts Referred:

Punjab Pre-emption Act, 1913 — Section 15

Citation : (1973) 2 ILR (P&H) 123

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : Bachittar Singh, for the Appellant; D.D. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—The petitioners, Kalwant Singh and others. are legal representatives of Tara Singh who had purchased the agricultural land in dispute situate at village Mundhiala by means of a registered sale deed dated 7th June, 1967, from Santa Singh respondent No. 2. Sher Singh (respondent No. 1) pre-empted the sale claiming superior right of pre-emption on the plea that he was the real brother of Santa Singh. In contesting the suit, Tara Singh vendee, besides setting up a plea of estoppel and limitation pleaded that the suit was bad for partial preemption and was not maintainable in view of the provisions of Section 15 of the Punjab Pre-emption Act as a portion of the suit-land was Banjar-Qadim and the same was reclaimed by the vendee after the date of the sale. On this written statement, dated 27th December, 1968, issues arising in the case were settled on 23rd March, 1969, and thereafter the evidence produced by the parties was recorded. Before the defendant Tara Singh could close his evidence, he unfortunately died and on 23rd August, 1969, the present petitioners applied for being impleaded as his legal representatives. Their application having been allowed, they produced further evidence and closed their case on 12th March, 1970. Thereafter the plaintiff closed his evidence in rebuttal on 28th March, 1970, and the case was adjourned to 10th April, 1970, for arguments. Again it

came up for arguments on 18th April, 1970, Instead of proceeding with the arguments, the present petitioners made an application under Order 6 Rule 17 of the CPC seeking permission to amend the written statement that had been put in by Tara Singh so as to introduce the plea that Tara Singh deceased-vendee was the tenant of the vendor in a portion of the suit land at the time of the sale and thus the sale to the extent was not pre-emptible. The learned Subordinate Judge having disallowed this prayer for amendment, Kulwant Singh and other legal representatives of the deceased-vendee have come up in revision.

2. After hearing the parties counsel, I am of the opinion that there is no merit in this petition and it must fail. Ignoring the fact that it has been laid down in some cases, including Civil Revision No. 1065 of 1968 Messrs Mangalrai Melaram v. Ranjit Singh Aggarwal C.R. 1065 of 988. decided by this Court on 21st August, 1969. that no petition for revision lies Against an order refusing to allow amendment, I find that the learned Subordinate Judge has acted in consonance with the rules governing the question of amendment under Order 6 Rule 17 of the CPC and his order is eminently just and proper. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others AIR 1967 S.C. 363, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. It is on the latter clause that Mr. Bachittar Singh, appearing for the petitioners, has laid emphasis. He argues that if the assertion of the petitioners that their father was a tenant in a portion of the suit-land at the time of the sale is correct, then the sale was not preemptible, and since that is a question which goes to the root of the case, the amendment should be allowed. In the same authority it is further observed that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct but the amendment would cause him an injury which could not be compensated in costs. The same rule was reiterated by their Lordships of the Supreme Court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and it was observed that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. Their Lordships further added that the Courts always give leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his conduct, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. The matter was also considered by the same Court in A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation AIR 1957 S.C. 96 and it was held that in the matter of allowing amendment of pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred. Where,

however, the amendment does not constitute the addition of a new cause of action or raise a different case but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation.

3. It is needless to refer to other authorities as the principles dealing with an application for amendment under Order 6 Rule 17 seem to be now well-settled, and they may be stated as follows:

(1) Amendments should be allowed which do not work injustice to the other side and are necessary for determination of the real question in controversy between the parties,

(2) An amendment should not be allowed where it works injustice to the other party and it cannot be placed in the same position as if the pleadings had been originally correct but the amendment would cause him an injury which could not be compensated in costs,

(3) Where the opposite party can be compensated by costs, the amendment may be allowed if it satisfies the requirements stated at No. 1 above,

(4) As a general rule a party is not allowed by amendment to set up a new case or a new cause of action particularly when the suit on the new cause of action is barred or raises a different case.

4. Keeping these principles in view, now the facts of the case before us may be examined. The suit was instituted as far back as 24th July, 1968, when Tara Singh, in whose shoes the petitioners have stepped because of his death, filed a written statement on 27th December, 1968. He took up all sorts of pleas to defend the sale in his favour, disputing the right of the plaintiff to pre-empt it. As has been observed earlier he even claimed that a part of the property was exempt from pre-emption as it was Banjar Qadim reclaimed by him. He nowhere alleged that he was a tenant in any portion of the property purchased by him under the pre-empted sale. If he was in fact a tenant and this plea was open to him, I cannot imagine that he would give it up especially when he was represented by a counsel who had also signed the written statement. Out of the present petitioners, who are the legal representatives of Tara Singh, two are minors while the third is the widow of Tara Singh. They could not obviously be in a better position than Tara Singh himself to know in what capacity Tara Singh was holding the land. It is thus obvious that the plea, which has been sought to be introduced by an application for amendment, was intended to set up an entirely new case and to prolong the proceedings.

5. Tara Singh in fact died at a time when the evidence was being recorded and he had actually examined most of his witnesses in support of his case. On 23rd August 1969, the application for bringing the present petitioners on record as legal representatives of Tara Singh was made. After it was allowed, they also produced evidence and closed their case on 12th March, 1970. It was only when

the case was fixed for arguments that they came up with the prayer for amendment of the written statement on 18th April, 1970. Apart from the fact that there has been inordinate delay in applying for amendment, it is apparent that they attempted to introduce a new case. By urging that Tara Singh was a tenant in a part of the suit land, they wish to take that part of the property out of the claim for pre-emption, The amendment is thus not intended merely to introduce some facts which were necessary for disposal of the various pleas already taken but to set up a new case that a part of a property was not pre-emptible in view of the provisions of Section 17-A of the Punjab Security of Land Tenures Act, Even according to the principles found in the various decisions of their Lordships of the Supreme Court on the question of amendment, such a plea cannot be allowed to be taken. Apart from the fact that, it introduces a new case, I am of the opinion that if the amendment is allowed, it would work injustice to the plaintiff respondent and no amount of costs can compensate him. In dealing with this matter, it is pertinent to advert to the following observations of Batchelor J in *Kisandas Rupchand v. Rachappa Vithoba* ILR 33 Bom. 644 which were quoted with approval by their lordships of the Supreme Court in AIR 1957 S.C. 368 (Supra):

Where a plaintiff seeks to amend by setting up afresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore still remains the same can the amendment be allowed without injustice to the other side, or can it not ?

8. It is true, as pointed out by Mr. Bachitar Singh, that these observations pertain to a new plea which is sought to be introduced by the plaintiff and beyond the period of limitation, but the principle laid down by Batchelor J must govern the prayer for amendment made by a defendant as well. The question that has to be considered before an amendment is allowed is whether it would work injustice to the other side if a new case is permitted to be introduced at the stage at which the amendment is sought to be made In my opinion, in the instant case by the amendment sought to be made the respondents have attempted to introduce a new case, In dealing with this matter, it must also be remembered that the petitioners have stepped into the litigation as legal representatives of their deceased father who was the real contesting defendant, and only such defences are open to them as were available to their father Tara Singh had not only the opportunity to put forward all the defences that were open to him, but as has been noticed earlier, put in a detailed written statement taking up all sorts of pleas which could be urged in a suit for pre-emption He had even claimed exemption from pre-emption for a part of the property, and it is unimaginable that if he was a tenant in a part of the suit land and the sale to that extent was not pre emptible in view of the provisions of Section 17-A of the Punjab Security of Land Tenures Act, he would not have taken it. If the petitioners were permitted to introduce this fresh plea at this stage, it will certainly work grave

injustice to the defendant-respondent, which cannot be compensated by costs.

7. I am accordingly, of the opinion that the application for amendment has been rightly disallowed. The petition is dismissed with costs. The parties counsel are directed to cause the appearance of their clients before the trial Court on 12th February, 1971.