
(2000) 03 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1976 of 1999

Mukhtiara and Others

APPELLANT

Vs

Dharam Singh and Others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2000) 125 PLR 436

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : K.S. Sidhu, for the Appellant; Ajay Tewari, for the Respondent

Judgement

M.L. Singhal, J.—This is Civil Revision filed by the plaintiffs against the order dated 31.3.1999 passed by Additional Civil Judge, Senior Division, Patiala whereby he dismissed their application for amendment of the plaint made under Order 6 Rule 17 of the Code of Civil Procedure. It was a suit for permanent injunction filed by the plaintiffs against the defendants restraining them for dispossessing them from land measuring 44 Bighas 18 Biswas situated in Village Baron, Tehsil and Distt. Patiala, as detailed in the heading of the plaint. It was alleged in the plaint that one Inder Singh alias Santokh Singh son of Nand Singh was owner of the land measuring 59 Bighas 18 Btswas. He died intestate and without leaving any heir. Inheritance of Inder Singh was mutated in the name of Patti-Daran of Patti Hukmi of village Baran vide mutation No. 1136 sanctioned on 26.11.1965. Plaintiffs Mukhtiara etc. and their deceased brother Norata Singh had been cultivating the land for many years even during the life time of Inder Singh alias Santokh Singh, Norata Singh died about 10 years ago leaving behind him widow Smt. Jasmer Kaur. Later on, application for partition was filed by Dharam Singh etc. against the plaintiffs and their brother Norata Singh urging that parties are Patti-Daran of Patti Hukmi Compromise took place. Land measuring 44 Bighas 18 Biswas fell to the share of plaintiff s and their brother Norata Singh. Remaining 15 Bighas was allotted to Dharam Singh etc. Mukhtiara

plaintiff No.1 is recorded in Jamabandi and khasra-girdawari as in possession of land measuring 43 bighas 3 biswas. In fact, this land is in the actual cultivating possession of all the plaintiffs and Mukhtiara's possession is on behalf of all of them. Similar is the case with regard to the land measuring 1 bigha 15 biswas out of khasra No.306/307. Possession of the plaintiffs is peaceful, legal and rightful during the last nearly 25 years after the said compromise. Even during the life time of Inder Singh, Mukhtiara, Dara Singh and Harnek Singh plaintiffs No. 1 to 3 and their brothers Norata Singh had been cultivating the entire land of Inder Singh for many many years before his death.

2. Plaintiffs made an application for amendment of the plaint under Order 6 Rule 17 CPC. By way of amendment, they want to claim declaration that they are owners of agricultural land measuring 44 bighas 18 biswas situated in village Baran. This application was opposed by Dharam Singh and others urging that plaintiffs and the defendants are not the only owners of the suit land. There are many other persons, who are also owners of the same. As per jamabandi, other Patti-Daran are also owners of this land. It was further urged that if the proposed amendment is allowed, the suit would not be maintainable against the defendants alone. Other Patti Daran, who are owners of this land shall also have to be impleaded.

3. Vide the impugned order, this application was dismissed.

4. I have heard the learned counsel for the parties and have gone through the record.

5. Initially, it was suit for permanent injunction filed by Mukhtiara and other plaintiffs whereby they had sought permanent injunction against Dharam Singh etc. defendants saying that this land fell to their lot at partition between Dharam Singh and others in the Court of Assistant Collector, 1st Grade where compromise took place on 22.8.1968 which was accepted by him vide order dated 31.8.1968. Basis of their suit for permanent injunction was their possession since long. By way of amendment, they want to sue for declaration that they are owners due to partition between the parties, which was upheld by Collector, Patiala vide order dated 30.9.1997. In a way through amendment, they want to claim ownership on account of this land having fallen to them at partition in the Court of Assistant Collector, 1st Grade.

6. Learned counsel for the petitioners" submitted that proposed amendment if allowed will not displace the cause of action originally pleaded at all nor will it bring about the substitution of that cause of action with another cause of action. Originally, the plaintiffs claimed only this much that they are in possession and there should be no interference with their possession. They have pleaded the basis of their claim to injunction. Through the proposed amendment, they want to claim declaration that they are owners of this land as this land had fallen to their lot at partition. Basis of their claim to ownership is also that this land had fallen to their lot at partition. It was held in Government of Karnataka and Ors. v.

M.B. Patil and Anr. 1997(1) CCC 102 (Kar) that "where the plaintiff had filed suit for the relief of permanent injunction directing the defendants to restore the schedule property to its original condition by filling up the pits and by removing the earth basing his claim on certain registered sale deed, amendment of the plaint could be allowed to enable the plaintiff to claim additional relief of declaration of title and possession based on facts already given in the plaint." It was held that "as regards the claim for declaration of title that plaintiff be declared to have title over that land which can only be said to be clarification of the pleading and nothing more as in the plaint of the suit for either possession or injunction, plaintiff has first to assert his title or right or interest in the property with respect to which he claims the relief for possession or injunction. If and when the plaintiff has asserted the right in the plaint though in the suit for injunction or possession, he has not specifically claimed a relief for declaration in specific form, the claim of declaration was definitely involved in the case as a result of claim made in the body of the plaint."

7. "The general rule, no doubt, 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 new case of cause of action is barred. It is well recognised that where amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation." This was the observation made by Hon"ble Supreme Court in A.K. Gupta and Sons Vs. Damodar Valley Corporation, . It was held in Ch. Venkata Subrahmanya Babu v. Chanshni Lakshmana Das 1996(2) CCC 186 (A.P.) that ":where a suit for injunction was sought to be converted in suit for possession through amendment of plaint such amendment should be allowed as if such amendment is allowed there will be no alternation so far as the nature of the suit was concerned and there will be no change in the cause of action. Amendment should" be allowed where relief sought by way of amendment is also based on the same cause of action on the basis of which the suit was instituted.

8. Learned counsel for the respondents, on the other hand, submitted that any amendment which changes the nature of the suit cannot be allowed. In this case, if the proposed amendment is allowed, it will change the nature of the suit. In the original plaint, they did not claim that they are owners of the land. They only claimed injunction restraining the defendants-respondents from dispossessing them from the suit land. It was submitted that in a simple suit for permanent injunction, only this fact is to be adjudicated as to whether the plaintiffs are in possession without going into the question of title. Plaintiffs had set up this compromise in the partition proceedings, and AC 1st Grade passed order on 31.8.1968. According to the said compromise and order, land measuring 44 bighas 18 biswas was allotted to Mukhtiara etc. plaintiffs and their brother Norata Singh. Question of title arose in partition proceedings commenced denovo. Partition proceedings cannot be decided till question of title raised by Mukhtiara etc. plaintiffs is decided.

9. Merely because application for amendment was moved at a little related stage can be no ground to refuse it particularly when allowing amendment of the plaint is justified by facts of the case.

10. According to the petitioners, partition had taken place earlier in the year 1968. Compromise took place on 22.8.1968 at which land measuring 44 bighas 18 biswas fell to their lot. That compromise was accepted by AC 1 st Grade. According to them they have been in possession of this land ever since then due to that compromise. Respondents have commenced partition proceedings over again in which the petitioners have raised question of title. Assistance Collector cannot proceed further with partition proceedings till the question of title is decided. He can decide the question of title himself or can have the question of title decided by the Civil Court. In this case, through amendment of the plaint, petitioners have raised question of title before the Civil Court.

11. In this view of the matter also, the proposed amendment should have been allowed. So, this revision is accepted and the proposed amendment is allowed on payment of Rs. 1,500/- as costs.