

(1976) 08 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 836 of 1975

Raghibir Dass Che(sic)a Mahant Hira Dass and another	APPELLANT
Vs	
Charan Das and others	RESPONDENT

Date of Decision : 10-08-1976

Acts Referred:

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

Citation : (1976) 08 P&H CK 0009

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Gian Singh, for the Appellant; Ashok Bhan, for the Respondent

Final Decision : Allowed

Judgement

Harbans Lal, J.—This revision is directed against the order of the Subordinate Judge. First Class, Ballabgarh, dated January 18, 1975, whereby the application of the Plaintiffs-Petitioners, for amendment of the plaint, under order VI Rule 17, Code of Civil Procedure, was partly dismissed.

2. The Plaintiffs-Petitioners, filed a suit for declaration and permanent injunction to the effect that Defendant No. 1 Charan Dass, was not a duly appointed Mahant or Manager of temple Chhatriwala, and the mutations of the property in his name as Mahant are illegal, based on fraud and misrepresentation. Permanent injunction was also sought to be issued restraining Defendant No. 1, from taking possession of the property, and to receive any income or offering in the temple. A long history of the litigation has been referred to in the various paragraphs, of the plaint, but for the purpose of the disposal, of this revision petition, the brief facts are that Mahant Siya Ram Dass died on June 20, 1961, without appointing any successor Ram Dass, Defendant No, 5, applied the Collector, for holding election to the office of the Mahant. The Sub Divisional officer (Civil), Palwal, fixed the election, which was challenged by Defendant Nos. 1 and 2 in a writ petition decided by Tewatia, J. vide his judgment dated July 28, 1971, and it was held that the proposed election of the Mahant through the Sub-

Divisional Officer (Civil), was illegal. In paragraph 15 of the plaint, the following averments have been made:

That the Plaintiff belonging to Rama Mandi Belch and being a devotee and worshipper of the temple and also a candidate to be appointed as Mahant, whose rights are seriously effected, is entitled to file the present suit.

By the proposed amendment, by adding paragraphs 1-A and 1-B in in the plaint, Raghbic Dass, Plaintiff Petitioner, wants to get himself declared as Mahant on the basis of the alleged spiritual Mantra which, according to him, were administered in his car by late Siya Ram Dass, regarding whose succession there is a dispute, and that the temples of Hanuman Ji and Sita Ram Ji, in the northern region, are under the direct spiritual teachings of Baghichi Madho Dass of Delhi and that Plaintiff No. 1, being the spiritual follower of Baghichi Madho Dass, situated near Red Fort, Delhi, is entitled to succeed to the office of Mahant of Mandi Chhatriwala, situated in village Ranhera Khera, Tehsil Ballabgarh. Thus whereas in the original plaint, Plaintiff No 1, claimed himself to be a candidate to be appointed as Mahant, by the proposed amendment, he claims that he is already the Mahant on account of the administration of Mantras and also being the spiritual follower of Baghichi Madho Dass.

3. Suit was filed on August 30, 1972, and the application for amendment was filed on February 15, 1974, that is after about one and a half years No reasons are mentioned in the application for filing the application for amendment after such a long delay.

4. The application has been dismissed by the trial Court on the ground that the proposed amendment will entail a drastic change in the nature of the suit. According to the Learned Counsel for the Plaintiffs-Petitioners, Kaghbir Dass, the proposed amendment by the Petitioner does not want to change the nature of the suit, but only wants to add two new grounds in support of his contentions. Reliance was placed on a number of decisions of various High Courts and also of their Lordships of the Supreme Court in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, the Plaintiff, who was the Manager of a Joint family and was carrying on its business under the business name, filed a suit in that business name and on objection having been taken, made an application for amendment of the plaint, praying that he himself had intended to file the suit in that application. there was no averment that the misdescription of the Plaintiff was on account of a bona fide mistake. It was in these circumstances held by their Lordships of the Supreme Court, as follows:

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide or that by his blunder, 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.

In *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, Amendment was allowed the stage of Supreme Court and it was held,-

It is not disputed that at the date of the application for amendment, a suit for a money claim under the contract was barred. 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 or cause of action is barred *Welden v. Neale*. (1887)19 Q.B.D. 394 But it is also well recognised that where the amendment does not confute the addition of a new cause of action or raise a different case, but amounts to 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.

From a perusal of the above-mentioned two decisions of their Lordships of the Supreme Court, it is clear that the amendment could not be disallowed only on the ground of negligence or delay and that the amendment should be disallowed only if some valuable right has vested in the other party which cannot be compensated by costs It has also been held that the rules of procedure should not be interpreted in a rigid manner so as to defeat the ends of justice. The Learned Counsel for the Respondents, relied upon *Shrimati Iqbal Begum v. Akhatar Ali* 1973 Cur. LJ 231 wherein the application for amendment had been made by the Defendant for amendment of the written statement after the Plaintiff had finished his evidence. In the original written statement, the Defendant had admitted the transaction, but it was averred that the Plaintiff knew of the purchase and there was no deficiency in the area. By the proposed amendment, the Defendant wanted to reverse completely her original stand and wished to plead that the entire transaction was a bogus one and no consideration passed between the parties and that she was duped by the Plaintiff who was her *Mukhtiar-i-am*. It was in these circumstances, that the amendment was disallowed by the trial court and the revision was dismissed by the High Court.

5. In the present case, the application for amendment has been made after a lapse of one and a half years, but the suit has not proceeded beyond the stage of framing of the issues and no evidence has been led on either side. The question is, whether the proposed amendment by which the Plaintiff No. 1, wants to establish his status as a Mahant of the institution concerned on a new ground, which was not taken in the original plaint, should be allowed after long delay or not. There can be no dispute with this principle that this ground could be taken in the original plaint and no right has vested in the Defendant in as much as there is no decision of any Court so far in favour of the Defendant and against the Plaintiff.

6. It has not been contended by the Learned Counsel for the Defendant, that the

proposed amendment cannot be pleaded because the same has become barred(sic) by limitation. If the proposed amendment is disallowed it is likely to lead to multiplicity of suits. The principle of law seems to be well established that the provisions of Order VI Rule 17 Code of Civil Procedure, should be liberally construed so as to determine all controversies between the parties finally in the same suit,

7. Keeping the circumstances of this case in view, in my opinion, it is in the interest of justice that the proposed amendment disallowed by the trial Court should be allowed. The revision petition is, therefore, accepted. However, as the application for amendment was made after considerable delay, the Plaintiff-Petitioners are burdened with Rs. 200/- as costs, which will be paid in the Court below before filing the amended plaint. There will be no order as to costs.