
(2013) 07 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : CR No. 5174 of 2009 (O and M)

Sadhu Singh

APPELLANT

Vs

Balvir Kaur and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 172 PLR 32

Hon'ble Judges : Paramjit Singh, J

Bench : Single Bench

Advocate : Sandeep Punchi, for the Appellant; S.S. Sandhu for Respondents No. 8 to 14, for the Respondent

Judgement

Paramjit Singh, J.—Instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 11.05.2009 (Annexure P-4) passed by Addl. Civil Judge (Sr. Divn.), Moga whereby the application under Order 6 Rule 17 of the CPC (in short "the CPC") vide which the application for amendment of plaint moved by the petitioner-plaintiff has been dismissed. Brief facts for disposal of the present petition are that the plaintiff filed a suit for declaration claiming that he is owner in possession of land measuring 8 kanals 5 marlas i.e. 1/8 share of total land measuring 66 kanals 4 marlas along with consequential relief of permanent injunction restraining respondents No. 1 to 4 from alienating, transferring, encumbering by way of sale, mortgage, exchange or in any manner or way to any person without due course of law. Apart from this suit, another civil suit No. 171/8.6.1998 titled as Gulzar Singh etc. v. Sadhu Singh etc." relating to the estate of Nanak Singh between the parties was pending in the Court of Civil Judge (Jr. Divn.), Moga and was decided on 9.8.2001 and an appeal filed by the petitioner was pending. During the pendency of appeal, the matter was taken up in the Lok Adalat and on 23.8.2003, the statements of Gulzar Singh and Boota Singh and Sh. J.S. Chahal, Advocate on behalf of the remaining defendants/respondents were recorded. The case was compromised. The said compromise is reproduced as under:

With the intervention of the respectables and efforts made in Lok Adalat, we have compromised with Sadhu Singh-appellant and agreed to give 1/3rd share in the suit property left by our father Nanak Singh. We shall also effect compromise likewise regarding the agricultural land left by our father-Nanak Singh, regarding which civil suit is pending. The impugned decree of the learned trial Court granting 1/5th share to Sadhu Singh-appellant be modified accordingly because as per compromise he is entitled to 1/3rd share. For this purpose, Halqa Kanungo be appointed as focal commissioner, who shall go to the spot and demarcate 1/3d share of Sadhu Singh-appellant and 2/3rd share of the respondents. We shall equally contribute the fee of the local commissioner.

2. The respondents had undertaken to effect compromise likewise in this civil suit pending at the time when the appeal was taken up in the Lok Adalat. The respondents are bound by their admission made before Lok Adalat regarding the subject matter of this civil suit but out of greed and under legal advice they are not agreeing to suffer the statement of compromise in terms of compromise already effected. This illegal act of the respondents has, therefore, necessitated the petitioner to amend the plaint. The petitioner sought permission of trial Court to amend the plaint by adding para No. 4(a) as under:

That during the proceedings of this declaratory suit relating to the agricultural land of deceased-Nanak Singh was pending an appeal titled as "Sahdu Singh v. Gulzar Singh etc." bearing number Civil Appeal No. 85 of 12.09.2001 against the civil decree dated; 9.8.2001 passed by Court of Mr. K.K. Bansal, PCS, Civil Judge (Junior division), Moga relating to the land situated in the abadi of the village Singha Wala which was the property of the deceased Nanak Singh was pending in the Court of Mr. J.S. Chawla, Additional District Judge, Moga, which appeal was disposed of in the Lok Adalat on 23.08.2003 on the basis of the statements of the parties other counsel i.e. the plaintiff and defendants. In this statement dated 23.08.2003 recorded in the Lok Adalat defendant-Boota Singh, Gulzar Singh in person and on behalf of defendant Bishun Kaur and Gurcharan Kaur their counsel Sh. Jugraj Singh Chahal, Advocate suffered a statement that:

We have compromised with Sadhu Singh appellant and agreed to give 1/3rd share in the suit property left by our father Nanak Singh. We shall also effect compromise likewise regarding the agricultural land left by our father-Nanak Singh, regarding which civil suit is pending.

The said application of the petitioner has been dismissed by trial court vide impugned order (Annexure P-4). Hence, this petition.

3. I have heard learned counsel for the parties and perused the record. 4. After hearing learned counsel for the parties, I am of the considered view that this petition must succeed. It is well settled principle of law that where by mistake or inadvertence the plaintiff omits to claim an appropriate relief, the Court has always the power to grant the same according to the circumstances of the case. This principle is in fact recognized by Order 7 Rule 7 of the CPC. It is controlled

by only three conditions, namely, (i) that the relief granted should be based on facts stated or referred to in the plaint and should not be inconsistent with the case set up by the plaintiff, (ii) the relief granted should be based on the same cause of action as the relief claimed in the suit and (iii) the relief granted to the plaintiff should not be of an entirely different description from the relief claimed in the plaint.

5. By seeking amendment in plaint, the petitioner wants to add the factum of compromise effected between the parties. Admittedly, the parties entered into compromise in regard to the subject matter of appeal preferred against another suit pending in between the parties and also the subject matter of the present suit. Admittedly, the compromise was effected after filing of the present suit by the petitioner and now the petitioner wants to include the factum of compromise in the plaint. This proposed amendment is based on the same set of facts which are already adumbrated in the plaint and the cause of action is also the same. The amendment so sought does not militate against the original relief claimed, but will avoid multiplicity of litigation.

6. It is now well settled by various decisions of the Hon'ble Apex Court as well as High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is likely to be caused to the other side or that the prayer for amendment is not a bona fide one. Moreover, rules of procedure are intended to be 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 by an order of costs. Howsoever negligent or careless may have been the first omission and howsoever late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. Mere delay in making an amendment application, itself, is not enough to refuse amendment, as for delay other party can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side. Consequently, the revision petition is allowed, the impugned order dated 11.5.2009 (Annexure P-4) dismissing the application of the petitioner-plaintiff for amendment of the plaint is set aside and the application of the petitioner for amendment of the plaint is allowed. Amended plaint be filed within three weeks from receipt of certified copy of this order and respondents will be at liberty to file written statement, if any, to the amended plaint within two weeks thereafter. The parties through their counsel are directed to appear before the trial Court on 22.07.2013. Considering the facts and circumstances, the parties are left to bear their own costs.