
(1974) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1369 of 1973

Sardar Hari Bachan Singh	Vs	APPELLANT
Major S. Har Bhajan Singh and Another		RESPONDENT

Date of Decision : 06-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1975 P&H 205

Hon'ble Judges : Pritam Singh Pattar, J

Bench : Single Bench

Advocate : J.K. Pandit and Y.K. Sharma, for the Appellant; N.L. Dhingra, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Singh Pattar, J.—This is a revision petition filed by Hari Bachan Singh defendant against the order dated October- 22. 1973. of the Senior Sub-Judge. Ropar. whereby he permitted the plaintiff to amend the plaint on payment of Rs. 500/-as costs.

2. Briefly stated the facts of this case are that Harcharan Singh son of Sardar Harnarn Singh resident of Kharar. District Ambala (now District Ropar) died in the year 1951 leaving Shrimati Suraj Kaur, plaintiff No. 1. a widow and Har-bhajan Singh, Plaintiff No. 2. a son by her and another son Hari Bachan Singh, defendant by another wife Jaswant Kaur. After his death, mutations in respect of the land owned by Harcharan Singh in various villages were entered in favour of the two sons in equal shares. Suraj Kaur filed four appeals against those orders before the Collector, Ambala relying on a will executed by her husband in her favour and these appeals were dismissed. She went up in revision to the Commissioner, Ambala Division and her revision petitions were accepted on August 20, 1957 and the Commissioner made a recommendation to the Financial Commissioner that mutations in favour of Suraj Kaur should be sanctioned. When

this matter came up before the Financial Commissioner. Punjab. the parties came to a settlement and it was agreed between them that the entire estate of Sardar Harcharan Singh be divided into five parts. Harbhaian Singh plaintiff and Hari Bachan Singh defendant were to set two shares each and Suraj Kaur. the widow, was to get one share. In accordance with the statements of the parties the Additional Financial Commissioner passed order on April 9, 1958 that the mutations of the property in dispute shall be entered in accordance with the shares mentioned in the compromise arrived at between the parties after the Deputy Commissioner had evaluated and divided the property between the claimants. The Deputy Commissioner, Ambala was appointed to personally evaluate the property divide the shares and transfer them to the different shareholders. The present civil suit was filed by Shrimati Suraj Kaur and her son Tikka Harbhaian Singh on June 27. 1961" for a declaration to the effect that they are owners and heirs entitled to the property in dispute as detailed in the heading of the plaint and out of the said property, plaintiff No. 2 alone is entitled to the property given at item No. (h) of the heading of the plaint and that Hari Bachan Singh. defendant No. 1. who is not the son of Sardar Harcharan Singh deceased, has no right, title or interest in the property and a decree for permanent injunction restraining him from getting the property in dispute partitioned and from interfering with their Possession may be issued against him. It was alleged in the plaint that they were in possession of whole of the suit property and hence this suit for declaration was filed. They averred that Sardar Harcharan Singh was a Jagirdar and according to the rule of primogeniture, which governed the Cis Sutlei Jagir property, in matters of succession, the entire property devolved on the plaintiff No. 2. who is the eldest son. They alleged that the statements of the parties dated April 9. 1958 and the orders of the Financial Commissioner dated April 9. 1958 and January 12. 1959 were, illegal, against law and without jurisdiction and were not binding on them. The suit was contested by Hari Bachan Singh defendant on various grounds. He denied the allegations made in the plaint and stated that the plaintiffs were not in possession of the suit property and the suit was not maintainable in the present form. The issues in this case were framed on October 24. 1961 by the Senior Sub-Judge. Ferozepur. Issue No. 1 reads as follows: --

"Whether the plaintiffs are in possession of the suit property and if not, what is its effect."

After recording the evidence of the parties, the trial Court held that the plaintiffs were in possession of the property and the suit was maintainable in the present form.

3. It appears that during the pendency of the suit, Hari Bachan Singh. defendant-petitioner, had made an application for partition of this land. The plaintiffs made an application in the trial Court to stay the proceedings of partition of the land before the revenue officer, but the application was rejected. Against that order, they filed a revision petition in the High Court, which was also rejected. The final

order of partition of this land was passed on or about February 27. 1965 by the revenue officer. In the meantime this suit was transferred from the Court of the Senior Sub-Judgp. Ferozepur to the Court of the Senior Sub-Judge. Ambala. After the reorganization of Punjab with effect from November 1, 1966. this suit was transferred to the Court of the Senior Sub-Judge, Ropar. In accordance with the partition effected by the revenue officers, Hari Bachan Singh. defendant-petitioner, took possession of some of the land, which fell to his share, in the year 1967.

4. The case was fixed for arguments on merits in the Court of the Senior Sub-Judge. Ropar on July 19. 1973. when the defendant made an application that a suit for mere declaration was not competent as he had taken possession of the land allotted to him in partition. The plaintiffs then made an application for amendment of the written statement, but in that application the details of the Khasra Numbers of the land were not given and, therefore, it was dismissed on August 25. 1973 and the plaintiff was permitted to file a fresh application for amendment. The plaintiff, Tikka Harbhajan Singh filed another application for amendment of the plaint on September 11. 1973. Shrimati Suraj Kaur. plaintiff No. 1. died during the pendency of the suit, on December 17, 1972- In this application for amendment, it was alleged by the plaintiff that when the suit was filed, he and his mother Shrimati Suraj Kaur were in possession of the land and they made every effort to get an order from the Civil Court to stay the partition proceedings pending before the revenue officers, but they did not succeed and that Hari Bachan Singh. defendant No. 1. in pursuance of the orders passed by the revenue officers in those proceedings had taken possession of a Part of the property in suit and. therefore, they wanted to add a further relief for a decree for possession of that property situated in the various villages. It was prayed that in Para. No. 18 Of the plaint, Clause (L) may be permitted to be added to take the plea that the Financial Commissioner, Revenue. Punjab, without any authority amended the compromise between the parties by order dated January 12. 1959 and stated in that order that the defendant shall also be entitled to get land in Kharar. and in pursuance of this order the subordinate revenue officers effected partition, which is illegal and is against the compromise. Some additions and omissions were also prayed to be made in paras, Nos. 20. 21 and 22 of the plaint, regarding the possession of the properties. In para. No. 3. the value of the suit for the purpose of court-fees was also sought to be amended with respect to the relief for possession.

The defendant No. 1, Hari Bachan Singh, contested this application. He alleged that the proposed amendment would introduce a new and inconsistent cause of action and would change the nature of the suit and, therefore, it should be refused. He alleged that if the amendment is allowed, about three dozen persons, to whom he had sold various portions of his property, which he obtained on partition, shall have to be added as defendants, that some of those transferees had constructed buildings, sank tube-wells and planted orchard on that land and they shall be claiming price of those improvements. He further

proved that some of the land, which he obtained on partition, was taken over by the Government as surplus land under the Pepsu Tenancy and Agricultural Lands Act and that some land in the revenue estate of Kharar was acquired by the Government and the compensation for the same had been assessed and he had obtained Rupees 48,281/- as compensation out of the amount awarded to him and. therefore. various complicated questions of fact and law would arise and this application. which has been made after about 12 years of the institution of the suit, should be dismissed. The petition was also stated to be made mala fide with a view to pro-long the decision of the suit, which is now fixed for final arguments on merits. The Senior Subordinate Judge. Ropar. after hearing the counsel for the parties, accepted the application of the plaintiff and permitted him to amend the plaint on payment of Rs. 500/- as costs. Feeling dissatisfied, Hari Bachan Singh, defendant filed the revision petition in this Court.

5. Order 6. Rule 17, Civil Procedure Code, lays down that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

6. The first contention of Shri J.K. Pandit, the learned counsel for the petitioner is that the proposed amendment would introduce a new and inconsistent cause of action and would change the nature of the suit and. therefore, it should be refused and in support of this contention he relied on a number of decisions of various High Courts and the Supreme Court.

7. In *Kulwant Singh v. Sher Singh*, 1971 Puni LJ 218. it was held per head-note (b) as under:--

"The principles dealing with an application for amendment under Order 6. Rule 17 of the CPC are;--

(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 he 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."

8. In *Ishar and Others Vs. Sudesh Kumar and Another*, it was held that the

general rule of amendment of pleadings is that a party is not allowed by amendment to set up a new case or a new cause of action and to convert the claim into one of different and inconsistent character. Similar was the law laid down in Kundanlal Verma Vs. Sushila Devi,); Baijnath Bhalotia Vs. State Bank of India and Others, : Ashwath Rao v. Sushila Bai. AIR 1971 Mvs 141 and Harbans Singh Vs. Mehnga Singh and Others, There is no dispute regarding the law laid down in these cases. However, these cases are not applicable to the case in hand. In this case, the plaintiff is not withdrawing any of the existing pleas taken in the plaint and is raises new pleas in lieu thereof, but he wants to take additional plea for a decree for possession of the property in suit, of which possession was taken by the Petitioner during the pendency of the suit in pursuance of the orders passed by the revenue officers in the partition proceedings. It is a case of a subsequent event, which took place during the pendency of the suit and consequently the plaintiff wants to amend the plaint to claim decree for possession of that land.

9. It is well-settled law that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated for by costs. A plaintiff may add a new cause of action and the defendant may add a new defence. Even a new case may be allowed to be introduced. The Court has to take into consideration even subsequent events. A further principle which is also usually considered is that as far as possible multiplicity of suits should be avoided. Where, therefore, the plaintiff sought permission merely to add a prayer for possession which did not alter the cause of action or change the essential nature of the suit, and the effect of the refusal of the amendment would have been to drive the plaintiff to a fresh suit, the amendment should be allowed; Vide Watkins Mayor and Co. Vs. Registrar of Trade Marks, Bombay and Another, ; Maruti v. Raneanath. AIR 1955 Hvd 1 (FB); Amritlal N. Shah Vs. Alla Annapurnamma, and Valluru Appalasuri and Others Vs. Sasapu Kannamma Nayuralu, . In the instant case, by the proposed amendment, a decree for possession of some of the land in suit, whose possession was taken during the pendency of the suit by the defendant in pursuance of the order of partition Passed by the revenue officers. is claimed and it will neither alter the cause of action nor the nature of the suit. This additional prayer is not inconsistent with the existing pleas taken in the plaint. If the amendment is refused, the plaintiff shall have to file a fresh suit for possession. Therefore, in view of the law laid down in the abovementioned cases, the contention of the petitioner's counsel must be rejected and the amendment should be allowed.

10. The learned counsel for the petitioner then contended that if the proposed amendment is allowed, there will be delay in the disposal of the suit which is pending for the last more than 12 years, that the defendant had sold the property of which he took possession, to several persons, some of whom built houses, sank tubewells and planted orchards on that land and. therefore, they

shall have to be impleaded as defendants and there will be a de novo trial of the case and the disposal of the suit will be delayed because fresh evidence shall have to be recorded. This contention cannot be accepted in view of the law laid down by the Supreme Court in the various cases cited at the bar by the learned counsel for the respondent-plaintiff. In *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, . it was held:--

"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."

In paragraph 13 of this judgment it was further observed as follows:--

"It may be that as a result of the amendment, if the respondent chooses to raise a controversy about the work done. that is. about the quantity, quality and other things concerning it, which it had never raised so long, the matter will have to be gone into. That again would not justify a refusal of leave to amend. It would not mean any waste of time or money or any duplication of work. That investigation would now be made for the first time and nothing done so far would become futile."

The observations made in this case give a complete answer to the contention of the learned counsel for the petitioner that after the amendment evidence shall have to be adduced and it will prolong the decision of the case. Their Lordships of the Supreme Court observed in this case that the mere fact that as a result of the amendment further enquiry into the claim of the plaintiff shall have to be made would not justify a refusal for amendment of the plaint to add a claim for possession which did not alter the cause of action. The next case relied upon by the learned counsel for the respondent is : *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, . wherein it was held:

"It is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals. The appeal being a continuation of the suit new pleas are not considered. If circumstances change they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition there are a few exceptions. Sometimes, it happens that the original relief claimed becomes inappropriate or the law changes affecting the rights of the parties. In such cases Courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid cir-cuity of action the Courts allow an amendment."

In this case, application for amendment was made on the last day of hearing of the appeal in the High Court on December 14. 1965. by the defendant, to amend

the written statement. The suit was instituted on October 13, 1942, and it remained pending for 17 years in the sub-ordinate Court. The Supreme Court observed in the body of the judgment that mere delay and laches in making the application for amendment is no ground to refuse the amendment. Similar was the law laid down in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, and *Charan Das v. Amir Khan*. AIR 1921 PC 50. In *Lala Megh Rai v. Firm Raghbar Das Beni Prasad*. AIR 1938 Lah 712, it was held: per head-note:--

"It is not by a mere change in the wording of the Plaint or the introduction of fresh details that the nature of a suit is altered. The alteration which affects the case is one where the original suit is wholly displaced by the proposed amendment or where a totally different or inconsistent case is introduced. But where this is not the case, leave to amend cannot be refused merely on the ground that the words which did not find place in the original plaint had been introduced in the subsequent plaint, even though the effect of those words is not to introduce a new or an inconsistent case."

To the same effect was the law laid down in *Nichhalbhai Vallabhai v. Jaswantlal Zinabhai*. AIR 1966 SC 097 and *P. C. Muthu Chettiar v. R. M. Venkatachalam Chetty*. AIR 1935 Mad 237. It was further observed in these two cases that the amendment should be allowed to avoid multiplicity of suits. Therefore, in view of the law laid down in the above cases, the amendment of the plaint to add a claim for possession for part of the property in suit, the possession of which was taken by the plaintiff, must be allowed to avoid multiplicity of suits even though there may be delay in the disposal of the suit. In the instant case, there is no delay in making the application for amendment. As clearly stated, the possession of this land was taken by the defendant in the year 1967. The plaint was amended in the year 1967 by the plaintiff to add the Deputy Commissioner, Rupar, as a defendant, and Hari Bachan Singh, defendant, filed a written statement wherein he alleged that he had taken possession of the land in pursuance of the orders passed by the revenue officers in partition proceedings and the suit. Therefore, the suit was not maintainable in the present form. Necessary issues arising out of the amended pleadings were framed on January 24, 1968 and one of those issues was whether the defendant took possession of some of the suit land during the pendency of the suit and what is its effect on the maintainability of the suit. The defendant-petitioner and his attorney made statements in Court on or about May, 1969 and produced documentary evidence. It appears that in the year 1969, the stamp auditor raised an objection that the plaint was not properly stamped with the court-fee and that the same should be paid on the value of the property as this case fell u/s 7(iv)(c) of the Court-fees Act. The plaintiff was ordered by the Court to pay additional court-fee on July 2, 1969. The plaintiff gave up the relief of injunction on July 9, 1969. However, the plaintiff filed a revision petition in this Court against the order of the trial Court directing him to pay the additional court-fee. This revision petition was dismissed on January 21, 1970, and the parties were directed to appear in the trial Court on February 16, 1970. The plaintiff did

not appear in the trial Court on that day and the suit was dismissed. The plaintiff filed a petition for restoration of the suit on March 9, 1970. and this was dismissed by the trial Court on March 14 1972. The plaintiff then filed F A. O No. 140 of 1972. which was accepted on March 22. 1973. The letters patent appeal filed by the defendant against that order was dismissed on May 9, 1973. The file of this case was then sent to the Senior Subordinate Judge. Rupar. and the case was fixed for arguments on July 19, 1973. when the defendant made an application that a suit for mere declaration was not competent. The plaintiff then made an application for amendment of the plaint, but it was dismissed on August 25. 1973. because the description of the land was not properly Given in the application and he was directed to file a fresh petition after giving the details of the property. Thereafter, the present petition for amendment was made on September 11, 1973. Thus, there was no delay much less negligence or carelessness on the part of the plaintiff to make this application for amendment. In view of the law laid down in the abovementioned cases cited on behalf of the respondent, the petition to amend the plaint was rightly allowed by the lower Court. It may be mentioned that the proposed amendment of the plaint is confined to possession of land only and to no other property. The plaintiff has also not claimed recovery of Rs. 48,000/-. which the defendant has obtained from the Punjab Government as compensation of a part of the land allotted to him. in partition, in Kharar. which was acquired by the Punjab Government.

11. According to the rule of *lis pendens* contained in Section 52 of the Transfer of property Act. neither party to the litigation can alienate the property in dispute so as to affect his opponent. The rule is based not on the doctrine of notice, but on expediency. The effect of this rule is not to annul the transfer but only to render it subservient to the rights of the parties to the litigation. According to this rule of *lis pendens*, whosoever purchases a property during the pendency of a suit is held bound by the Judgment that may be made against the person from whom he derived his title even though such a purchaser was not a party to the action or had no notice of the pending litigation. It is a rule of public policy for otherwise successive alienations will defeat the very purpose of litigation, making it interminable. Vide *Santa Singh v. Raiinder Singh* AIR 1965 PWD 415 (FB) and *Simla Banking and Industrial Co. Ltd. Vs. Firm Luddar Mal Khushi Ram and Others*, . Therefore, according to these cases, the contention of the learned counsel for the appellant that all the persons to whom the appellant transferred the land after getting possession during the pendency of the suit would be necessary parties and it would prolong the litigation has no force and is repelled. The alienee, whose alienation is hit by the doctrine of *lis pendens* contained in Section 52 of the Transfer of Property Act cannot claim any compensation for the improvements made by him on the Property purchased during the pendency of the suit. He purchases the property subject to the result of the litigation which will be binding on him whether he is a party to the case or not.

12. One of the purposes and objects of allowing amendment of the plaint is to avoid multiplicity of suits and the Court has discretion to allow an amendment: of

course the discretion has to be used, in a judicial manner. The considerations, which normally weigh with the Court. are whether the amendment can be allowed without working injustice to the other side and whether award of cost can compensate the opposite party. Normally the High Court does not interfere u/s 115, CPC if the lower Court in exercise of its iudicial discretion allowed the amendment. In the instant case, the learned Sub-Judge rightly and iustlv allowed the plaintiff to amend the plaint and 1 see no reason to interfere with his order.

13. For the reasons given above, this revision petition fails and is dismissed. In view of the point of law involved. the parties are left to bear their own costs.