

(1995) 05 DEL CK 0038

In the Delhi High Court

Case No : Interim Application No. 6799 of 1991 and Suit No. 1893 of 1986

Suraj S.J. Bahadur

APPELLANT

Vs

Shakji S.J. Bahadur

RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

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

Citation : (1995) 34 DRJ 224

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Sanjeev Sachdeva, Arun Mohan and N.K. Kantawala, for the Appellant;

Judgement

Usha Mehra, J.

(1) The plaintiff has sought the amendment of his plaint by this application. He wants to incorporate in detail the facts regarding setting up of a "Will" dated 10.7.1981 by the defendant and also the family arrangement arrived at between him and the defendant No.1 during the lifetime of his father dated 26.2.1958.

(2) In order to appreciate the relevant contention raised by the parties at the Bar, the brief and necessary facts for the determination of this application have to be looked into, which are based on the fact that the plaintiff has sought for partition of the joint family properties. In para 5 of the plaint, he had pleaded that his father constituted a joint Hindu family consisting of his sons and himself as Karta. After executing a family arrangement whereby 15 acres of orchard land situated in village Jamalpur, District Gurdaspur vested with the plaintiff. The value of this orchard was assessed at Rs. 30,000.00 Orchard land was given to the plaintiff because defendant No.1 was compensated for the amounts given to him from Huf funds in building up by him of an automobile workshop. The said family settlement was contained in the "Will" executed by his father dated 26.2.1958. The said "Will" was signed by the plaintiff as well as defendant No.1 signifying their acknowledgment of the agreement. After the death of the father,

the defendants have set up a "Will" dated 10.7.1981 alleged to have been executed by their father. Relying on this "Will", they are trying to revoke the earlier "Will" and codicil and bequeathing all his assets in favor of his grand daughters, defendant Nos.2 and 3 in equal shares and avoiding the other grand children namely the children of the plaintiff. Defendants have concealed the earlier family arrangements and by concealment of the same got the orchard land which vested with the plaintiff, mutated in their name. By inadvertent plaintiff in the prayer clause sought for the partition of this 15 acres of land which in fact vested with the plaintiff exclusively. Therefore, no partition could be claimed for this property which belongs to the plaintiff. Moreover the plaintiff had challenged the validity of the alleged "Will" dated 10.7.1981 as set up by the defendants, but some material particulars of challenge were left over. The details of the same could not be given in the plaints Though reference of the suit bearing No-926/85 Filed for injunction has been mentioned. In replication, some details have been given of these facts. plaintiff has challenged the mutation carried out by the Collector, Pathankot on 21.3.1985 and the orchard land in favor of the defendants. The plaintiff wants to challenge the validity of the alleged "Will" dated 10.7.1981 on the ground that it was not executed by his father nor father could bequeath Huf property. If at all the said "Will" was signed by the father, it must have been obtained from him under undue pressure and coercion by defendant No.1 to favor his own children. Similarly the "Will" alleged to have been executed by the mother Smt.Vilas Roop Chand dated 11.3.1980 is also illegal and void. She had no right in this property. Earlier plaintiff Filed suit for partition and injunction against defendant No.1 and his father which was listed as Suit No.397/79. After the death of the father, the plaintiff being the eldest male member automatically became Karta of the Huf properties, and Therefore, that suit became infructuous. Since defendant No.1 was provided Financial help from the family funds in order to set up a workshop which was claimed by the plaintiff as joint family property but the defendant No.1 disputing the same. The parties had set up conflicting claims thereon in order to compromise the conflicting claims of his sons, the father of the plaintiff and defendant No.1 made the said family arrangement in the form of a "Will" dated 26.2.1958. The object was to settle the present and future disputes regarding the family properties. After the death of the father, the possession of this 15 acres of orchard land vested with the plaintiff. He also took over the possession of the same, thus the family settlement was acted upon. It is in this background and in order to completely and effectively adjudicate all the disputes and the matter in controversy that present amendments have been sought.

(3) The amendment has been sought in the title of the suit which according to the plaintiff should be read as "Suit for declaration and partition". In para 4 of the plaint he wants to add about the Financial difficulties of defendant No.1 and the Financial help rendered by the father from the Huf funds which ultimately lead to the family arrangement duly signed by the plaintiff and the defendant No.1. In para 5 he wants to change the words "And only question was their

respective shares" instead he wants to add that the suit No.397/79 was Filed with the intension of obtaining the injunction from alienating the Huf properties and other details in that regard as to why that suit became infructuous. Similarly in the end of para 6, he wants to add that the alleged "Will" dated 10.7.1981 is illegal and void and the reason for declaring it illegal. Consequently, in para 15 he wants to add the jurisdictional value keeping in view the 15 acres of orchard land amounting to Rs.3 lacs and in para 16 the value for the purpose of Court Fee on account of this relief He also wants to add the word "Manage" between the word "to" and "all" and the word "As his separate shares". He also wants to amend para 17 the prayer clause (a) because of the consequential changes sought above.

(4) The defendants have objected these amendments, inter alia, on the grounds that the amendment sought are neither necessary nor have arisen from the facts pleaded and placed on record. In case as the plaintiff alleges that these changes have been mentioned in the replication then the replication being a part of the pleadings and the defendant having not raised any objection with regard to the replication being taken as a part of the pleadings, the present amendments are not necessary. Moreover, the amendments sought are malafide and an abuse of the process of the Court. By these amendments, the plaintiff in fact wants to incorporate evidence which is not permissible under law. Nothing was lacking in the pleading for which the amendment has been sought. The amendments sought are highly belated and have been sought with the purpose of delaying the suit.

(5) I have heard Mr.Sanjiv Sachdeva for the plaintiff and Mr.Arun Mohan, Sr. Advocate for the defendants and given my thoughtful consideration to the relevant contentions raised at the Bar. So far as the amendment of the cause title is concerned, there cannot be any objection nor the amendment sought in para 13 can be objected. These arc only consequential changes. So far as amendment in para 15, 16 and 17 are concerned, these arc also consequential in view of the averments now the plaintiff wants to incorporate in para 4, 5 and 6 of the plaint. The bare perusal of the averments made and which the plaintiff now wants to incorporate clearly show that these are clarificatory in nature. In the replication to the written statement Filed by defendant No.2, the plaintiff has mentioned as to how the family arrangement dated 26.2.1958 was arrived at and that it has already been acted upon. This is what he now wants to incorporate in para 4 of the plaint. Similarly, the amendment sought in para 5 of the plaint is by way of narrations of facts. These facts to some extent find mention in the replication to the written statement Filed by defendant No.2. But in order to avoid any technical and/or, legal objection subsequently and to put the facts straight the present amendment has been sought. Mr.Sachdeva has taken me through the replication filed by him to the written statement filed by defendant No.2 particularly pages 103, 105, 109, 143, 145, 155 and 169 of the file which show that these facts in brief have been mentioned by the plaintiff, in the replication. Therefore, if the plaintiff is allowed to incorporate the detailed

facts at appropriate places in the plaint, no prejudice would be caused to the defendants. Admittedly, no objection has been taken by the defendants to the replication being treated or forming part of the pleading, still if in order to put The record straight plaintiff wants to incorporate these facts in detail in the plaint no harm would be caused to the defendants nor any valuable right of the defendants would be taken away. As a matter of fact, no such right has as yet allowed in favor of the defendants which would be prejudiced by allowing these amendments. Such amendment cannot be rejected as unnecessary or sought after long period. It is not the case of the defendants that the plaintiff is setting up a new case or is changing the cause of action already set up. As already observed above, the present amendments which have been sought by the plaintiff are only clarificatory in nature. The details which the plaintiff wants to incorporate are permissible in law.

SIMPLY because this application has been filed after a long period is no ground to reject the amendments unless these are mala fide in nature as held by the Division Bench in the case of Mrs. Evelyn J.L. Sney Vs. Rajeshwar Nath Gupta and Others FAO.(OS).124 of 1994 decided on 23rd March, 1995. No mala fide can be assigned if the plaintiff in order to clarify the facts already on record wants to implead them in the plaint. Mr.Sachdeva made a statement at the-Bar that on these facts he does not want to lead any fresh evidence. On the contrary, the evidence which has already come on record covers these facts, Therefore, in order to avoid technical objection he wants to put these facts in the plaint. Issues already framed cover these facts. Therefore, on this ground also the amendment cannot be rejected. Moreover the defendants "knew the case of the plaintiff all along, hence no prejudice could be caused to the defendants if the amendments sought are allowed. The Apex Court in umpteen cases has held that the amendment which is clarificatory in nature or where the applicant is not setting up a new case or inconsistent case then such an amendment can be allowed even if sought after a long period. To support his contentions Mr.Sachdeva placed reliance on the following decisions reported in Mangal Dass Sant Ram Gauba Vs. Union of India and Others, ,

(6) For the reasons stated above, I find no merits in the objection of the defendants. The application is accordingly allowed. As the amendments sought are clarificatory in nature and are necessary for the proper and factual adjudication of the matter between the parties, the same are allowed. No fresh evidence will be allowed.

(7) The amended plaint is already on record. Let amended written statement, if any, may be Filed within four weeks.