

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****208****CR-6090-2019 (O&M)****Date of Decision : 05.05.2025**

Baldei and Others

....Petitioners

VERSUS

Hargian and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pawan Singh Gehlot, Advocate for the petitioners.

Mr. Amit Kumar Goyal, Advocate for respondent No.1.

Mr. Rajiv Rathor, Advocate for

Mr. Ketan Antil, Advocate for respondent Nos.3 to 5.

None for respondent Nos.6 and 8.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 05.07.2019 whereby application filed by the plaintiff-respondent No.1 for amendment of the plaint at the stage of rebuttal has been allowed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a simpliciter suit for permanent injunction averring therein that one plot measuring 0 kanal 10 marlas *gair mumkin* comprised in Khewat and Khatauni No.139/194 and Khasra No.242/359 (in two kitas) measuring 0-2 marlas *gair mumkin garha khad* and 0-8 *gair mumkin gitwara* total measuring 0-10 marlas situated within the revenue estate of village Karewari, Tehsil and District Sonapat was purchased by

plaintiff-respondent No.1 from one Suraj Mal son of Bihari Mal resident of Karewari, Tehsil and District Sonapat on 28.09.1994 for a sum of ₹15,000/- in the presence of witnesses and an affidavit duly attested by the witnesses and the Notary Public was executed and physical possession of the property was delivered to the plaintiff-respondent No.1 and since then the plaintiff-respondent No.1 has become owner in possession of the suit property. It was further averred that the defendants were interfering in the possession of the plaintiff-respondent No.1 and hence the suit for permanent injunction. Defendant No.1 (petitioner No.1 herein) filed a written statement raising various preliminary objections. In para 5 of the preliminary objections it was stated that Smt. Baldei (petitioner No.1 herein) had purchased a plot measuring 150 sq. yards to the extent of 5/8th share comprising in Khewat No.253, Khata No.285, Plot No.359 (0-8M) gair mumkin situated with the revenue estate of village Karewari, Tehsil and District Sonapat as per the Jamabandi for the year 2010-2011 vide registered sale deed No.2883 dated 25.06.2014 for a sale consideration of ₹5,04,000/-. A copy of the sale deed was also appended with the written statement. It was further averred that even the actual physical possession of the suit land was handed over to petitioner No.1. Similar stand was taken by defendant Nos.2 and 3 i.e. respondent Nos.2 and 3 in their written statement. When the case was fixed for rebuttal evidence, an application was filed by the plaintiff-respondent No.1 under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint. It was stated in para 2 of the application that at the time of filing of the suit there was a threat from the defendants and plaintiff-

respondent No.1 therefore could not file the suit for specific performance to enforce the agreement to sell/affidavit/*panchayatnama* dated 28.09.1994 and now the property had been sold by Om Parkash, Shakuntla, Santra, Suresh and Ramesh to the defendants and that Naresh son of Raghbir was threatening to sell the property standing in his name to someone else. Hence, it was necessary to amend the title and para Nos.1 to 6, 9 and prayer clause of the plaint. In the application the amendment sought was to change the title from that of permanent injunction to a suit for declaration and symbolic possession by way of specific performance with consequential relief of permanent injunction. The entire plaint was sought to be changed and as was the prayer. Reply was filed to the said application. Vide the impugned order the said prayer has been allowed. Aggrieved by the same, the defendant-petitioners have preferred the present revision petition.

3. Learned counsel for the defendant-petitioners would contend that by way of the amendment the nature of the suit itself has been changed and infact the earlier plaint has totally been substituted by a new plaint. It is further the contention that while allowing the application the Trial Court has held that the plaintiff-respondent No.1 only wants to amend the sale consideration and since it is a settled proposition of law that the amendment of pleading can be allowed at any stage, it has allowed the amendment.

4. *Per contra* learned counsel for the plaintiff-respondent No.1 has contended that the amendment is necessary as it was only in 2014 on filing of the written statement that the plaintiff-respondent No.1 became aware of the sale deed in favour of the defendants. Further reliance has been placed on

the judgment of the Hon'ble Supreme Court in case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** to contend that all necessary amendments ought to be allowed.

5. Heard.

6. In the present case, initially the suit was filed simpliciter for permanent injunction. By way of the amendment the plaintiff-respondent No.1 sought to amend the entire plaint to change the nature of the suit from that of permanent injunction to a suit for declaration as well as for specific performance. The heading of the plaint, para Nos.1 to 6 and 9 and prayer clause were sought to be changed by way of the amendment. The Trial Court while allowing the amendment has held that the amendment cannot be declined solely on the ground that it would change the nature of the suit since it is essential for effective and conclusive adjudication. It has further been held that the plaintiff-respondent No.1 only wants to amend the mere sale consideration, which would not change the nature of the suit. Their Lordships in case of **Sanjeev Builders Private Limited** (*supra*) have held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) *by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

(ii) *the amendment changes the nature of the suit,*

(iii) *the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.*

(v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

(vi) *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

(vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

(viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively

adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”.

7. Para 70 (iv) of the above referred judgment specifically states that a prayer for amendment is generally required to be allowed unless a time barred claim is sought to be introduced; the amendment changes the nature of the suit; by way of amendment the other side loses a defence. In the present case, it is not only a question of delay but also that a totally new case is now sought to be set up. The argument of learned counsel for plaintiff-respondent No.1 that prior to 2014 he did not know about the sale deed in favour of the defendants and hence the necessity to move the application, deserves to be rejected. The written statement was filed in the year 2014 and there is absolutely no reason forthcoming from the amendment application as to why the plaintiff-respondent No.1 did not amend the suit or seek to challenge the sale deed till 2018. Further still, the suit initially was for permanent injunction and now by way of the amendment the nature of the suit is sought to be changed, which cannot be permitted in law as has also been held in case of **Sanjeev Builders Private Limited** (*supra*). From a suit for permanent injunction the suit now has been permitted to be amended to a suit for declaration, symbolic possession by way of specific performance with consequential relief of permanent injunction. The amendment now sought would amount a *de novo* trial

inasmuch as fresh issues would be required to be framed in view of the amendment and fresh evidence would have to be led.

8. In view of the above, the impugned order dated 05.07.2019 cannot be sustained and the same is accordingly set aside. Consequently, the present revision petition stands allowed and the amendment application filed by the plaintiff-respondent No.1 is dismissed.

9. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

05.05.2025
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO