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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-526-2020 (O&M)

Reserved on : 15.07.2025

Date of Decision : 05.08.2025

Bishamber

... Petitioner(s)

VERSUS

Dwarki & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.P. Sharma, Advocate for the petitioner.

None for respondent Nos.1, 2, 3 and 5 despite service.

Service of respondent Nos.4 and 6 dispensed with
vide order dated 21.10.2022.

ALKA SARIN, J.

1. The present revision petition has been filed by the plaintiff-petitioner challenging the impugned order dated 07.09.2019 (Annexure P-1) whereby the application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration that the plaintiffs (petitioner and proforma respondent Nos.3 to 6 herein) are owners in possession of the land as fully detailed in the plaint. It was the case set up by the plaintiffs that Bhoomla was owner in possession of the suit land and upon his death on 16.11.1974, mutation No.549 was sanctioned on 16.01.1975 in favour of Jahar @ Jaharia, father of the plaintiff-petitioner, Chhotte Lal (defendant-respondent No.2 herein), Smt. Janki, Smt. Anchi, Smt. Mohra and Smt. Panchi. It was further the case set up that Chhotte Lal (defendant-

respondent No.2 herein) and Smt. Janki, Smt. Anchi, Smt. Mohar and Smt. Panchi daughters of Bhoomla transferred their 5/6th share out of the suit property vide judgment and decree dated 28.07.1975 in favour of Smt. Dwarki (defendant-respondent No.1 herein) and mutation No.565 dated 19.07.1978 was also sanctioned. Thereafter, since a dispute arose between Jahar @ Jaharia and Chhotte Lal (defendant-respondent No.2 herein), a family settlement was entered into on 02.02.1977 whereby it was agreed that both the brothers, namely, Jahar @ Jaharia and Chhotte Lal would get half share each. The family settlement was stated to have been reduced into writing on 02.07.1977 and a certified copy of the settlement was also appended. It was further the case set up that on the death of Jahar @ Jaharia on 01.09.1979, mutation No.581 was sanctioned in favour of the plaintiffs and their mother to the extent of 1/6th share which was wrong, illegal and against the family settlement dated 02.07.1977. Written statement was filed by the defendant-respondent Nos.1 and 2. After the plaintiffs had led their evidence, an application was filed under Order 6 Rule 17 CPC for amendment of the plaint seeking to add the following paragraphs :

“In alternate suit for declaration that plaintiffs are owner in possession of 7/18 share measuring 42 kanal agriculture land bearing khewat No. 42, Khatoni No.62, measuring 45 kanal 10 marla and khatoni no.63 measuring 19 kanal 7 marla and khatoni no.64 khasra no.126 gair mumkin 13 marla and khatoni no.65 rectangle and killa no.31//10/2 gair mumkin tubewell 14 marla total measuring 66 kanal 4 marla and khewat no.43 khatoni no.66 kitta 4 measuring 30 kanal 8 marla and khewat no.44 khatoni no.67 measuring 9 kanal 14 marla total measuring 40 kanal 2 marla and total in

every three khewat 106 kanal 6 marla vide jamabandi 1973-74 situated at Village Asrawas Tehsil Narnaul on the basis of the notional partition and defendant. No.1 as per the judgment and decree dated 28.07.1975 is only comes to owner in possession of 11/18 share and judgment and decree dated 28.07.1975 to the extent of 5/6 share is totally wrong and against the fact and not binding on the plaintiffs and mutation no. 565 dated 19.07.1978 of village Asrawas to the extent of 5/6 share is totally wrong, illegal, null and void and not binding on the plaintiffs.”

AND

“That if the Hon’ble Court on basis of the family settlement dated 02.02.1977 does not declare the plaintiff 1063/1530 share measuring 53 kanal 3 marla as owner in possession then in alternative the plaintiffs are entitle for the declaration that the plaintiffs are owner in possession of 7/18 share measuring 42 kanal in khewat No.42, Khatoni No.62, measuring 45 kanal 10 marla and khatoni no.63 measuring 19 kanal 7 marla and khatoni no.64 khasra no.126 gair mumkin 13 marla and khatoni no.65 rectangle and killa no.31//10/2 gair mumkin tubewell 14 marla total measuring 66 kanal 4 marla and khewat no.43 khatoni no.66 kitta 4 measuring 30 kanal 8 marla and khewat no.44 khatoni no.67 measuring 9 kanal 14 marla total measuring 40 kanal 2 marla and total in every three khewat 106 kanal 6 marla vide jamabandi 1973-74 situated at Village Asrawas Tehsil Narnaul on the basis of the notional partition and defendant No.1 as per the judgment and decree dated 28.07.1975 is only comes to owner in possession of 11/18 share and judgment and decree dated 28.07.1975 to the extent of 5/6 share is totally wrong and against the fact and not binding on the plaintiffs and mutation no.565

dated 19.07.1978 of village Asrawas to the extent of 5/6 share is totally wrong, illegal, null and void and not binding upon the plaintiffs as defendant no.1 on basis of the judgment and decree dated 28.07.1975 has sold around 30 kanal land and by deducting the 30 kanal, defendant no.1 be declared owner in possession of only 34 kanal vide judgment and decree dated 28.07.1975.”

In the application the plaintiffs (petitioner and proforma respondent Nos.3 to 6) claimed that they were in possession on the basis of notional partition and that on the basis of the judgment and decree dated 28.07.1975 the extent of 5/6th share in favour of the defendant-respondent Nos.1 and 2 was totally wrong and not binding on the plaintiffs. Reply was filed to the said application and vide the impugned order dated 07.09.2019 the application was dismissed. Hence, the present revision petition.

3. None has put in appearance on behalf of respondent Nos.1 to 3 and 5 despite service. Service of respondent Nos.4 and 6 was dispensed with vide order dated 21.10.2022.

4. Learned counsel for the plaintiff-petitioner would contend that the amendment sought is only a relief in the alternative and it would not change the nature of the suit and further that the plaintiff-petitioner does not want to lead any evidence qua the same.

5. Heard.

6. In the present case, initially the suit was filed and no challenge was laid to the judgment and decree dated 28.07.1975. However, by way of the amendment application a challenge is being laid to the judgment and decree dated 28.07.1975 as well as the mutation dated 19.07.1978. It is not the case of the plaintiff-petitioner that the said judgment and decree or

mutation were not within his knowledge, rather the factum of the judgment and decree dated 28.07.1975 and mutation No.565 dated 19.07.1978 finds mentioned in the plaint itself. The amendment would change the nature of the suit and would amount to a *de novo* trial as even though the plaintiffs may not wish to lead evidence, however, the issues would have to be framed qua this factum and the defendant-respondent Nos.1 and 2 would have to be given an opportunity to cross-examine the plaintiffs qua this fact.

7. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** has 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 pinpointedly 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).”

8. In the present case, by way of the amendment the defendant-respondent Nos.1 and 2 would lose a valid defence qua the judgment and decree dated 28.07.1975 which was never challenged initially. It would also amount to withdrawal of a clear admission which had conferred a right on the other side.

9. In view of the above, no fault can be found with the impugned order dated 07.09.2019. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

05.08.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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