(1998) 09 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1559 of 1998

Zail Singh and Others		APPELLANT
	Vs	
Harjit Singh and Others		RESPONDENT

Date of Decision: Sept. 8, 1998

Acts Referred:

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

Citation: (1998) 120 PLR 633 : (1998) 4 RCR(Civil) 380

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Premjit Kalia, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.
The present revision petition is directed against the order passed by the learned Additional Civil Judge (Sr. Division), Amritsar, dated 13.2.1998. By virtue of the impugned order the learned trial Court had allowed the application filed by the respondents seeking amendment of the plaint on payment of costs.

2. Some of the relevant facts can well be delineated which would draw the controversy between the parties. The respondents had filed a civil suit for possession of the suit land in question. It was alleged that their father was the original owner of the land and the petitioners have by misrepresentation and fraud got the mutation changed in their favour. It was further contended that petitioners were unauthorised occupants. The suit had been filed in the year 1989. During the pendency of the suit, the respondents prayed for amendment of the plaint alleging that Hardial Singh father of the respondents had mortgaged the land to petitioner No. 1 vide registered mortgage deed dated 20.11.1978. It was for a period of 15 years. The possession of the same was delivered to petitioner No. 1 on the same date. Fifteen years have expired and, therefore, the respondents who were plaintiffs had a right to redeem the said property.

3. Needless to state that the application as such was contested because the necessary amendment as result of the pleadings mentioned above was opposed. It was pointed that amendment if allowed, would change the nature of the suit and that it is totally inconsistent with the previous pleadings.

4. The learned trial Court on appraisal of the pleadings of the parties and other material before it, allowed the amendment holding that it is necessary to adjudicate the rights of the parties. Accordingly, the amendment was allowed on payment on Rs. 700/- as costs.

5. The learned counsel for the petitioners assails the order of the learned trial Court primarily on the grounds; (a) that it will change the nature of the suit; (b) that if amendment is allowed, it would date back to the period when the suit was filed and on that date 15 years from which date the mortgage had expired.

6. On both the counts, the said contention raised by the petitioners'' learned counsel necessarily must fail.

7. More often than once it has been accepted as a settled principle that all amendments should be allowed which are necessary to determine the questions in controversy. However, late may be the proposed amendment, it should be allowed when it is to adjudicate the rights of the parties properly and in an effective manner. Ordinarily, the nature of the suit is changed if the court may have refused the amendment. But in the peculiar facts when no prejudice is likely to be caused and amendment would necessarily flow from the events that are known to either party, the amendment should be allowed. What is the position herein? The petitioners knew that the land had been mortgaged but for a period of 15 years. They have not been taken by surprise. Therefore, even if a cause of action had been added as a result of subsequent events, the discretion so exercised by the trial Court cannot be termed to be arbitrary to prompt this Court to interfere.

8. As regards the second contention, the fifteen years period has expired only during the pendency of the suit. Indeed subsequent events that take place can always be taken note of. The matter in question otherwise also is squarely answered by a decision of this court in the case of Khem Chand and Others Vs. Laxmi Chand and Others, . Almost an identical situation as the present one had arisen and this Court taking note of the fact that court has to take note of the subsequent events held that it is not necessary that party should be relegated to file a fresh suit. Consequently, in the peculiar facts, there is no ground to interfere in the discretion exercised by the trial Court.

9. For these reasons, the revision petition must fails and is dismissed.