

Kamlesh Kumari Vs Pushpa Behal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 4, 2013

Citation: (2013) 171 PLR 837 : (2013) 4 RCR(Civil) 12

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Ashwani Chopra, with Mr. G.S. Sullar, for the Appellant; B.R. Mahajan, for the Respondent

Judgement

L.N. Mittal, J.

Defendant Kamlesh Kumari has invoked the jurisdiction of this Court by filing this revision petition under Article 227 of the

Constitution of India impugning order dated 10.08.2010 (Annexure P-5) passed by the trial court, thereby allowing application (Annexure P-3)

filed by respondent/plaintiff Pushpa Behal, for amendment of plaint. Plaintiff has filed suit for permanent injunction regarding the suit property

depicted by letters ABCD in site plan annexed by her with the plaint. In the amendment application, the plaintiff alleged that her husband had taken

the suit property on rent and during the life time of her husband, the plaintiff did not deal with any matter. Her husband has since died. The plaintiff

alleged that at the time of filing suit, relevant documents were not available, which have now been traced out, giving rise to necessity of amending

the plaint. By amending the plaint, the plaintiff sought to substitute para 1 of the plaint, as mentioned in the amendment application and also wanted

to add para 4-A in the plaint, as detailed in the application.

2. Defendant, by filing reply (Annexure P-4), opposed the application on various grounds.

3. Learned trial court, vide impugned order (Annexure P-5), has allowed the application for amendment of plaint, subject to payment of Rs.

2,000/- as costs. Feeling aggrieved, defendant has filed this revision petition.

4. I have heard counsel for the parties and perused the case file.

5. Learned senior counsel for the petitioner contended that by way of proposed amendment, even subject matter of the suit is sought to be

changed, besides change of cause of action and this could not be permitted. Reliance has been placed on two judgments of Hon'ble Supreme

Court namely V J. Samuel and Others Vs. Gattu Mahesh and Others, and Ravajeetu Builders and Developers v. Narayanaswamy and sons and

others 2010 (1) RCR (Civil) 27.

6. On the other hand, counsel for plaintiff-respondent contended that the suit was filed on 18.03.2010. On appearance, the defendant moved

application for production of certain documents. The plaintiff, along with reply to the said application, produced the documents in the Court and

immediately thereafter, filed application (Annexure P-3) dated 10.05.2010, without any delay, to seek proposed amendment of plaint necessitated

by the documents traced out by the plaintiff because previously, the documents were with her late husband, and therefore, the proposed

amendment of plaint, being on initial stage of the suit, has been rightly allowed.

7. I have carefully considered the rival contentions.

8. It is undisputed that application for amendment of plaint has been moved at initial stage, before commencement of trial. Consequently, judgment

in the case of J. Samuel (supra), which pertains to amendment of plaint after commencement of trial, has no applicability to the facts of the instant

case.

9. In the case of Ravajeetu Builders and Developers (supra), following principles of law have been laid down in paragraph 67 of the judgment for

adjudicating the question of amendment of plaint. The same are reproduced hereunder:--

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money:

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation?

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of

application?

10. In the light of aforesaid principles of law, in the instant case, proposed amendment of plaint has been rightly allowed by the trial court because

amendment was sought at initial stage of the suit. The plaintiff was earlier not in possession of the documents, which were with her late husband.

When the documents were traced out, she moved application for amendment of plaint without any delay and before commencement of trial. The

defendant has been duly compensated with costs, while allowing the amendment of plaint. In view of the aforesaid, I find no perversity, illegality or

jurisdictional error in the impugned order of the trial court so as to warrant interference in exercise of supervisory jurisdiction by this Court. The

revision petition is devoid of any merit and is accordingly dismissed.