

Rajinder Mohan Vs Purshottam Lal Goyal and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 28, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 1 Rule 10, Order 6 Rule 17, 151
Constitution of India, 1950 â€” Article 227

Citation: (2011) 2 CivCC 45 : (2011) 161 PLR 536

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant No. 2 Rajinder Mohan has filed the instant revision petition under Article 227 of the Constitution of India challenging order dated 15.09.2009 (Annexure P-5) passed by learned Additional Civil Judge (Sr. Divn.), Bathinda thereby allowing application

(Annexure P-3) moved by plaintiff-Respondent No. 1 Parshotam Lal Goyal under Order 6 Rule 17 read with Order 1 Rule 10 and Section 151 of

the CPC (CPC) for addition of parties and amendment of plaint.

2. Plaintiff-Respondent No. 1 and defendant No. 2- petitioner are real brothers who are sons of Banarsi Dass defendant No. 1 (since deceased)

and represented by Aseem Kumar Respondent No. 3. Plaintiff filed suit seeking declaration that he has 1/3rd share in all the four suit properties.

Defendant Nos.1 and 2 in the written statement raised various pleas and set up Will dated 01.08.1988 executed by Kishori Lal grandfather of

plaintiff and defendant No. 2. Family settlement reduced into writing on 13.04.1989 was also set up. Previous litigation and result thereof was also

pleaded. Some sale deeds executed by the plaintiff himself pursuant to family settlement were also pleaded by the defendants.

3. After filing of written statement, plaintiff moved application (Annexure P-3) for amendment of plaint and addition of parties. Basically, the

plaintiff wants to challenge Will dated 01.08.1988 allegedly executed by Kishori Lal, judgments/decrees/orders passed in previous litigation, family

settlements, a dissolution deed, sale deeds executed by the plaintiff himself and also wants to seek relief of separate possession of his 1/3rd share

in the suit properties by way of partition. Various grounds to challenge the Will, judgments, decrees and orders in the previous litigation, sale deeds

and family settlements etc. are also sought to be pleaded. Other persons affected by the said documents are sought to be added as parties.

4. Learned trial Court vide impugned order dated 15.09.2009 (Annexure P-5) allowed application (Annexure P-3) moved by the plaintiff. Feeling

aggrieved, defendant No. 2 has preferred the instant revision petition.

5. I have heard learned Senior Counsel for the parties and perused the case file.

6. Learned Senior Counsel for the petitioner vehemently contended that all the documents now sought to be challenged by the plaintiff by

amendment of plaint were already in the knowledge of the plaintiff and therefore proposed amendments sought by the plaintiff are not bona fide.

Learned Senior Counsel for the petitioner relied on judgment of Hon"ble the Supreme Court in case of Peethani Suryanarayana and Anr. V.

Repaka Venkata Ramana Kishore and Ors. 2009(2) RCR 521 to support his contention that amendment application which is not bona fide should

not be allowed.

7. On the other hand, learned Counsel for the plaintiff-Respondent No. 1 contended that Courts are always liberal in allowing amendment of

pleadings and pre-trial amendments should be allowed liberally. Reliance in support of this contention has been placed on judgment of Hon"ble the

Supreme Court in case of Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, . Learned Counsel for

Respondent No. 1 also contended that while allowing the amendment of pleadings, Court is not required to go deep into the matter so as to decide

whether the claim sought to be made by amendment is barred by time or not because such question could be finally decided at the time of final

decision of the suit. In support of this contention, reliance has been placed on judgment of this Court in Lallu v. Nirdosh Kumar 2009 (4) CCC

384. It was contended that in the instant case, amendment application (Annexure P-3) was moved before framing of issues i.e. before

commencement of trial and therefore the same has been rightly allowed.

8. I have carefully considered the rival contentions. Defendant Nos. 1 and 2 in their written statement referred to the Will, family settlements,

judgments, decrees and orders in the previous litigation and sale deeds etc. which are now sought to be challenged by the plaintiff by amendment

of plaint. Amendment application was moved before framing of issues i.e. before commencement of trial. It has been laid by Hon"ble the Supreme

Court in the case of Rajkumar Gurawara (supra) that pre-trial amendments are to be allowed liberally. Application for amendment moved by the

plaintiff cannot be held to be mala fide at this stage. The plaintiff has alleged that he was not aware of all the aforesaid documents when he filed the

suit. However, even assuming that he was aware of all the documents but still did not challenge the same in the original plaint, the amendment of

plaint cannot be rejected merely on this ground because amendment application has been moved at the initial stage of the suit, even before framing

of issues. Merits of the plea sought to be taken by amendment cannot be gone into at the stage of deciding the amendment application because

merits of the proposed amendment can be adjudicated upon only after the amendment is allowed and parties lead evidence.

9. Matter may also be examined from an other angle. If the plaintiff had pleaded the proposed amendment in the original plaint,, obviously the

defendants could not have any objection to the same except contesting the same on merits. Even if the plaintiff was party to the family settlements

and the previous litigation and the sale deeds now sought to be challenged, the amendment cannot be disallowed merely on this ground.

10. It has however to be noticed that the trial Court has imposed cost of Rs. 2000/- only while allowing the proposed amendment. The plaintiff is

making wholesale amendments in the plaint. Amendment application is running into 30 pages whereas the original plaint is running into 8 pages

only. The plaintiff is challenging large number of documents including judgments inter parties by way of amendment. The plaintiff is raising several

new pleas by amendment. Consequently, very heavy cost should be imposed upon the plaintiff while allowing the amendment. I am of the

considered view that the plaintiff should be burdened with cost of Rs. 20,000/-instead of Rs. 2000/- as imposed by the trial Court.

11. For the reasons aforesaid, I find no illegality in the impugned order of the trial Court except regarding amount of cost. Amendment application

was moved before framing of the issues and, therefore, has been rightly allowed. The instant revision petition is accordingly dismissed except to the

extent that plaintiff - Respondent No. 1 shall be liable to pay Rs. 20,000/- as costs for the proposed amendment. Obviously, defendants shall be at

liberty to raise all pleas including the plea of limitation as may be available to them under the law while contesting the amended plaint.