

**(2010) 09 P&H CK 0432**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 7375 of 2009

Rajinder Mohan

APPELLANT

Vs

Purshottam Lal Goyal and Others

RESPONDENT

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**Date of Decision:** Sept. 28, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227

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

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

**Bench:** Single Bench

**Final Decision:** Dismissed

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**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.