

Parminder Kaur Vs Angrej Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 4, 2014

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

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Sherry K. Singla, Advocate for the Appellant; Vikas Mehsempuri, Advocate for the Respondent

Final Decision: Allowed

Judgement

Rajiv Narain Raina, J.

Heard the petitioners and the respondents on caveat. By consent the case is taken on board for final disposal at the motion stage.

2. The suit was filed in 2008 by the plaintiff, the respondent herein. The petitioners complain that they were not made a party to the suit though

their rights were likely to be affected by the decree. They moved an application under O.1 RI. 10 CPC for impleading them as parties in order to

protect their direct interest in the subject matter. The application was allowed and they were added as defendants.

3. In addition to the written statement filed by the other co-defendants, the petitioners too set up their defense through a separate written statement

presented. Replication was filed to the written statement. On the basis of pleadings, issues were framed and the parties went to trial. The plaintiffs-

respondents No. 1 to 3 have examined witness PW1 Sukhraj Singh, who has been partly cross-examined by the plaintiff and his remaining cross-

examination was deferred. During the interregnum, the plaintiffs filed an application under Order 6 Rule 17 CPC praying for amending the plaint

with a view to incorporate the relief of declaration with respect to Jamabandis from the year 1960 onwards relating to the suit property from which

year they claim ownership and possession on the basis of a sale deed dated 2nd May 1960 which sale deed was mutated on 4th December 1981

in the name Khem Singh and which is seriously disputed by the parties, that is the plaintiffs claiming through late Khem Singh, their father who died

on 4th January 1981, and the added defendants, in a separate title suit where the plaintiffs, respondents herein, have challenged the said sale deed

in favour of the petitioners i.e. in suit for permanent injunction titled ""Gurpal Singh Vs. Parminder Kaur and others"" restraining Jasmail Singh and

Joginder Singh defendants from interfering in the peace possession of the suit land as they were the owners in possession of the property. The case

stated in Gurmukh Singh's suit is that by private partition after several years of the death of Khem Singh through a family settlement the suit

property came into the exclusive hands of plaintiff Gurmukh Singh.

4. Petitioner No. 1 claims ownership of 23 K 11 M of land by a sale deed dated 1st February, 2011 through GPA-petitioner No. 2 dated 27th

January 2011 from LR's of late Kalraj Singh s/o Chanan Singh claiming title as vendees from five brothers all sons of late Phaga Singh. The

respondents have filed separate suit against the petitioners and both the suits are pending trial. Certain admissions have been made by the plaintiffs-

respondents in those suits with respect to the rights of the petitioners. However, no opinion has been expressed in the impugned order on any of

the facts pleaded in those suits with respect to the present suit by the Court below. The learned trial judge by his impugned order dated 13th

March, 2014 has permitted the amendment on reaching a conclusion that no prejudice would be caused to the opposite parties and if the change is

allowed the nature of the suit would not be altered. These two conclusions have been arrived at without applying mind to all to the attending

circumstances, the litigation pending between the parties and the law on the subject of amendments of plaints. Furthermore, the question of

previous knowledge of the Jamabandies was lacking due diligence has not been considered for such facts were known to the respondents and

those should have been pleaded in the first instance, that is in the plaint at least before the commencement of the trial which is not the position since

the trial is in progress. In the amendment application is pleaded that the entry of title has not been recorded in the Column of Jamabandi by the

Revenue Department and the same is liable to be corrected. The suit is an old one pending since 2008. The plaintiffs complain that a suit for

permanent injunction has been sought to be converted to one for declaration which is impermissible. The proposed amendment seeks to convert

the suit as one of declaration u/s 45 of the Punjab Land Revenue Act and Chapter 6 of the Specific Relief Act, 1963 claiming ownership and

possession of the described property and for permanent injunction for which latter purpose the suit was instituted in 2008. In the proposed

amended plaint a prayer is made for declaring the names of Angrej Singh and the son and widow of Gurmail Singh, co-plaintiffs, as duly recorded

in Column 4 of all the Jamabandies from 1960-61 till date.

5. The questions which arise for consideration are whether any prejudice will be caused to the petitioners, the added defendants if the amendment

is allowed in favour of the plaintiffs-respondents and whether respondents had previous knowledge of the revenue record which could not be

known despite due diligence and further, whether law permits the amendment to introduce revenue record which was known or not known to them

in the beginning.

6. In the challenge to the impugned order the Learned counsel for the petitioners relies on a decision of the Supreme Court in Vidyabai and Others

Vs. Padmalatha and Another, where it is observed that the trial court has no jurisdiction to allow amendment of pleadings after commencement of

the trial. It is perfectly well settled that the date of commencement of trial is when issues are framed and the court first applies its mind. The

commencement starts effectively when evidence starts by act of filing of an affidavit of a witness in lieu of examination-in-chief which is the stage

achieved in this case. The law on the subject is also well settled in Kailash Vs. Nanhku and Others, and Salem Advocate Bar Association, Tamil

Nadu Vs. Union of India (UOI), which needs no further dilation.

7. Learned counsel further relies on a decision of the learned single Judge of this Court in Jaspal Kaur and Another Vs. Mohinder Singh and

Others, This Court invoked the proviso to Order 6 Rule 17 CPC in similar circumstances to hold against the plaintiff. The respondent had every

opportunity to raise the issue before the commencement of the trial or at least when the petitioners were added as contesting defendants, but not

having done so they cannot spark off a revisit to the pleadings or the issues framed and its cascading aftermath by altering and overhauling the

pleadings in the plaint leading to a fresh trial. The respondent in fact seeks to change the nature of the suit and its character through the amendments

in the plaint. It is also not the case where substantial injustice or miscarriage of justice would result if the impugned order is not set aside.

8. The respondents have already filed two separate suits for declaration challenging the sale deed dated 10th March, 2011 and 1st February 2011

respectively executed in favour of petitioner No. 1 through GPA which are pending and contested by the petitioners. The rights, title and interest of

the respective parties in the suit property will be adjudicated by the civil court in those cases.

9. Hence, there is sufficient reason found to interfere with the impugned order which allows the amendment in exercise of supervisory jurisdiction

under Article 227 of the Constitution of India. The learned trial court erred in accepting the application for amendment of the plaint after a long

lapse of time and for the wrong reasons. The rights of the parties will be governed by the outcome of the declaratory suits filed by Gurmukh Singh

through SPA Sukhraj Singh and the present case. Learned trial courts while deciding the suits on merits will not be influenced by anything said this

order which is limited to the questions arising under O.6 RI. 17 CPC.

10. Resultantly, the petition is accepted. The impugned order allowing the application under O.6 RI. 17 CPC is set aside. Trial to proceed

accordingly.