

(2014) 08 P&H CK 0297

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 4914 of 2014 (O&M)

Parminder Kaur

APPELLANT

Vs

Angrej Singh

RESPONDENT

Date of Decision: Aug. 4, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - 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 in this order which is limited to the questions arising under O.6 Rl. 17 CPC.

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