

Latest HLJ 2025 (HP)(1) 89 In the High Court of Himachal Pradesh, Shimla.

CMPMO No.42 of 2023

(A) Civil Procedure Code, 1908 Order VI Rule 17–Amendment of Pleadings–Due Diligence–Rejection of Amendment–Held–That, due diligence must be determined based on the facts of each case and that merely filing the application at a belated stage is not a ground to reject it if no prejudice is caused to the opposing party. (Para 22)

(B) Civil Procedure Code, 1908 Order VI Rule 17–Amendment of Pleadings–Scope & Permissibility–The proposed amendment was limited to the prayer clause and correction of a typographical error regarding the date of the sale deed, which was already on record and exhibited as Ex. PW-1/A–Held–That, the plaintiffs were not introducing a new case but were merely refining their claim based on an existing document–Amendment application allowed subject to costs of Rs. 5,000 payable to the defendant–Petition allowed. (Para 24)

Cases referred:

(1) Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another, 2022 SCC OnLine SC 1128.

(2) Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117. Parties represented by: For the Petitioners: Ms. Reeta Hingmang, Advocate. For the Respondents: Mr. Dheeraj K. Vashisht and Ms. Shrutika, Advocates.

Virender Singh, Judge.:- Petitioners have filed the present petition, under Article 227 of the Constitution of India, against order, dated 3rd January, 2023, passed by the Court of learned Civil Judge, Court No. III, Una, District Una, H.P. (hereinafter referred to as 'the trial Court'), in Civil Suit No. 39 of 2015, titled as Harbans Lal and others versus Babita Rani, whereby the learned trial Court has dismissed the application, filed under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), filed by the petitioners-plaintiffs (hereinafter referred to as 'the impugned order').

2. For the sake of convenience, the parties to the lis are, hereinafter, referred to, in the same manner, as were referred to, by the learned trial Court.

3. The factual position, as borne out from the record, may be summed up, as under:

3.1. Plaintiffs have filed a suit for possession of land, measuring 16 kanal 6 marlas, being 326/4444 share, out of total land, measuring 222 kanal 4 marlas, comprised in Kewat No. 1 min, Khatauni No. 1 min, bearing khasra No. 549, as entered in the jamabandi for the years 1955-56, situated in Mohal Lal Singi, Tehsil and District Una, H.P. (hereinafter referred to as 'the suit land'), on the ground that

the same is owned and possessed by the defendant, alongwith other land, to the extent of her share.

3.2. The said relief has been sought on the ground that the plaintiffs have purchased the land, vide registered sale deed, dated 28th December, 1981, for a sum of ₹ 6,000/- from Sh. Jaspal Singh, son of Sh. Ajit Singh, son of Sh. Jai Kishan, father of the defendant and mutation, in this regard, is stated to be sanctioned vide mutation No. 1220, dated 27th June, 1982.

3.3. According to the plaintiffs, there was stipulation in the sale deed that in case, there is any defect in the title of the vendor, regarding the subject matter of the sale, in that eventuality, the other land of the same value shall be given to the vendees, in lieu of the land sold.

3.4. It is their case that during partition, the title of vendor-Jaspal Singh, father of the defendant, was found defective, as such, mutation No. 1220, dated 7th June, 1982 was ordered to be reviewed by the Settlement Collector, vide order, dated 23rd December, 1998. Hence, the relief of possession has been sought.

4. The said suit was contested by the defendant, by taking the preliminary objections that the suit is not maintainable; the plaintiffs have no locus standi to file the present suit; the plaintiffs are estopped by their act, conduct, deeds and acquiescence to file the present suit; the plaintiffs have no legally enforceable cause of action; and, that the plaintiffs have not approached the Court with clean hands.

4.1. Admitting the fact, as a matter of record, regarding the share of Jaspal Singh, Tek Chand and Vijay Kumar, it has been denied that the estate of Jaspal Singh has been succeeded by the defendant. The defendant has also denied that the title of her father was defective. It has also been denied that the suit land, as well as, the land, which was subject matter of the sale deed, in favour of the plaintiffs, is the same. Hence, a prayer has been made to dismiss the suit. 5. Issues, in this case, were framed on 15th February, 2017. Thereafter, the parties to the lis were directed to adduce the evidence.

6. After the closure of the evidence, when, the matter was listed for arguments, an application, under Order VI Rule 17 CPC has been filed, by the plaintiffs.

7. By way of the said application, the plaintiffs had sought the indulgence of the learned trial Court to permit them to amend their pleadings in the following manner:

“That in the end of last line of the head note of the plaint after the words Tehsil and District Una HP as well as in the prayer para of the plaint, the following words/lines are to be added “by declaring the plaintiffs as owners thereof in lieu of sold land and as per covenant of sale deed dated 28.12.1981.”

8. The amendment has also been sought on account of typing mistake, as, according to the plaintiffs/applicants, the date of sale deed has wrongly been written and typed as ‘28.02.1981’, instead of ‘28.12.1981’ in the second and eleventh line of para-7 of the plaint.

9. The said amendment is stated to be essential for the decision of the real controversy involved between the parties. The proposed amendment is also stated to be not causing any prejudice to the defendant, nor, according to the plaintiffs/applicants, it will change the nature of the suit.

10. This application has been contested by the defendant/non-applicant, by taking the preliminary objections that the application is not maintainable and the same is liable to be dismissed, as, the trial has commenced long back; the relief claimed is barred by limitation and the proposed amendment is not based upon any subsequent development.

11. On merits, the application has been contested, on the ground that by way of the proposed amendment, the applicants want to take away the rights vested in the defendant, with the passage of time, as, the relief of declaration is required to be sought within three years from the alleged cause of action.

12. According to the defendant/non-applicant, the application for amendment has been moved, when, the case was fixed for arguments and the plaintiffs/applicants have felt that their suit is going to fall, on the ground. Hence, a prayer has been made to dismiss the application.

13. The plaintiffs/applicants have filed rejoinder to the reply, denying the preliminary objections, as well as, the contents of the reply, by virtue of which, the application has been contested.

14. The application has been dismissed by the learned trial Court, vide the impugned order.

15. Against the said order, the present petition has been filed, before this Court.

16. The order, impugned herein, has been challenged on the ground that the learned trial Court has not understood the controversy involved, in this case, and the application under Order VI Rule 17 CPC has simply been dismissed, on the ground, that no justifiable and cogent reason, for delay in moving the amendment application, has been given by the applicants.

17. Another reason for dismissal of the application has been mentioned in the order impugned herein that the essential ingredients of Order VI Rule 17 CPC have not been fulfilled, in this case, as the proposed amendment was already in the knowledge of the applicants and if the application is allowed, then, it will change the nature of the dispute.

18. Admittedly, the application for amendment, has been filed, when the case was fixed for arguments, before the learned trial Court.

19. In this backdrop, the material question, which arises for determination, before this Court, is whether, at this stage, the application, under Order VI Rule 17 CPC can be allowed, in view of the fact that the necessary ingredients, as per Order VI Rule 17 CPC, i.e. pleadings with regard to due diligence, have not been pleaded.

20. In view of the decision of the Hon'ble Supreme Court, in Life Insurance Corporation of India versus Sanjeev Builders Private Limited and Another, reported in 2022 SCC OnLine SC 1128, every case is to be seen, according to the facts and circumstances of that case. Relevant para 26 of the judgment, is reproduced, as under:

“26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has

repeatedly laid down the principle that such an amendment would be allowed even after expiry of statutory period of limitation.”

21. The document, which has been mentioned in the proposed amendment, i.e. sale deed, dated 28th December, 1981, has already been produced and exhibited as Ex. PW-1/A. Moreover, when, this document was exhibited, no objection has been raised by the defendant. As such, the document, upon which, the relief of declaration is being sought, by amending the prayer clause, as well as, amending/correcting the date of the sale deed, in the second and eleventh line of para 7 of the plaint, to the considered opinion of this Court, does not change the nature of the suit.

22. When, the plaintiffs have led the evidence to prove the sale deed, upon which, they are basing their claim, then, merely, on the ground of delay, the proposed amendment cannot be disallowed, as, for making the application, at a belated stage, the other party can be compensated, by way of costs, as held by the Hon’ble Supreme Court, in Chander Kanta Bansal versus Rajinder Singh Anand, reported in (2008) 5 Supreme Court Cases 117. Relevant paras-13 and 14 of the judgment, are reproduced, as under:

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the others case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.

14. Keeping the above broad principles in mind, let us ascertain whether the defendant has justiciable cause to file an application praying for

amendment of a written statement for bringing an agreement dated 10.09.1982. We have already referred to the fact that the plaintiff had approached the court seeking a decree for mandatory injunction as early as on 1986. We also refer to the fact that within a short duration i.e. in 1986 itself, the defendant has filed a written statement. Absolutely, there is no whisper about the prior partition agreement dated 10.09.1982. No doubt, in the application for amendment, it was stated that her son who is a Chartered Accountant all along was looking after this suit and he died in the year 1998. It is also available from the very same application that apart from her first son, namely, Sunit Gupta, defendant has another son by name Navneet Agarwal. Admittedly, the son who looking after the suit was none else than a Chartered Accountant. In such circumstances, if the alleged agreement dated 10.09.1982 between the plaintiff and defendant was in existence nothing prevented her son, Chartered Accountant, to bring it to the notice of her counsel and refer it in the written statement filed in the year 1986. It is relevant to mention that in the reply, the plaintiff has specifically denied the same and asserted that the alleged agreement/partition deed dated 10.09.1982 is a forged document and based on the same, the proposed amendment cannot be allowed. It is also not in dispute and best known to both parties the suit which is of the year 1986 came to be taken up for trial only in 2004 and admittedly on the date of filing of the petition for amendment, the trial was on the

verge of completion. It was brought to our notice that both sides have closed their evidence and completed their argument, but only at this stage the defendant filed the said application for amendment of her written statement.”

23. In this case, the plaintiffs/applicants are not introducing any new case. They are simply seeking amendment in the prayer clause and making the correction, regarding the sale deed, which is already on the record and has been exhibited.

24. Merely the fact that the application for amendment has been filed after the statutory period of time, the same cannot be made the sole ground to reject the same, as, the document has already been exhibited, only correction with regard to the execution of the sale deed and relief, on the basis of the sale deed, i.e. relief of declaration has been sought to be introduced in the plaint.

25. Even otherwise, considering the fact that the defendant has not taken any plea with regard to her adverse possession, over the suit land, even the suit of the plaintiffs, on the basis of the title, cannot be said to be barred by limitation.

26. Considering all these facts, this Court is of the view that the learned trial Court has fallen into an error by dismissing the application, under Order VI Rule 17 CPC.

27. Consequently, the present petition is allowed, impugned order is set aside and the application, under Order VI Rule 17 CPC, is allowed, subject to costs, assessed at 5,000/-, to be paid to the defendant, on the ? date, when the

parties will appear before the learned trial Court. The amended plaint, already annexed with the plaint, is ordered to be taken on record.

28. It is made clear that in case of non-payment of costs, the present petition shall be deemed to have been dismissed.

29. Since, the matter is pending adjudication for the last nine years, it is expected that the learned trial Court will decide the matter, as expeditiously as possible.

30. Parties, through their counsel, are directed to appear before the learned trial Court on 15th January, 2025.

31. Send down the record forthwith.