

## ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 23.07.2018 passed in O.S.No.175/2018, which impounded the agreement of sale dated 11.12.2002 under Article 5(i) of the Act, is set aside.

(iii) The sale deed executed on 29.08.2005, having been duly stamped, remains valid and operative as the document evidencing the transfer of title.

(iv) The plaintiffs' reliance on the agreement of sale in the partition suit is acknowledged. However, it must be understood that the agreement of sale has merged with the sale deed. Therefore, while the document may be used only for collateral purposes, it cannot be subject to impounding.

R.M.S.

Petition allowed.

(2024-3)215 PLR 476

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Pankaj Jain.

GODWIN AGRO PRODUCTS LIMITED and another – Petitioner,

Versus

SANTOKH SINGH and another – Respondent.

CR No.4291 of 2024

**(i) Civil Procedure Code, 1908 (V of 1908) Order 6 Rule 17 - Declaration is being sought through amendment w.r.t. same rasta qua which the injunction was sought initially - Obviously without declaring that the plaintiffs have easementary right, injunction could not have been granted recognizing the right of the plaintiff to use the rasta on the basis of easementary right i.e. right by prescription - Merely by claiming declaratory relief by way of proposed amendment, nature of suit does not get altered. [Para 13]**

**(ii) Civil Procedure Code, 1908 (V of 1908) Order 6 Rule 17 - Every amendment in the prayer clause does not amount to alteration in the nature of the suit. [Para 13]**

Mr. Chetan Bansal, for the petitioners. Mr. Gursimar Singh, for respondents No.1 and 2.

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**Pankaj Jain, J. (Oral) – (14th October, 2024)** - Present petition is directed against the order dated 16.07.2024 passed by Civil Judge (Junior Division) Dera Bassi, District SAS Nagar whereby the application filed by the plaintiffs seeking amendment of the plaint prior to framing of issues stands dismissed holding that the addition in the prayer clause by way of amendment w.r.t. relief of declaration shall alter the nature of the suit.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the plaintiffs and the respondents as the defendants.

3. Plaintiffs filed suit seeking decree of permanent injunction in form of a restrain against the defendants from blocking the rasta/passage as detailed out in the headnote of the plaint. Subsequently, an application was moved seeking amendment of the plaint whereby the plaintiffs proposed to amend the prayer clause of the plaint by incor-porating relief of declaration to the effect that they

are using rasta qua which injunction was sought in the initial plaint for last 40 years.

4. The application filed for amendment of the plaint was resisted by the defendants claiming that the amendment in the prayer clause shall materially alter the nature of the suit and impleadment of further parties by way of amendment, shall also lead to delay in final adjudication of the trial.

5. Trial Court dismissed the application. The peripheral amendment w.r.t. khasra number was allowed. However, rest of the amendment w.r.t. prayer clause was declined.

6. Counsel for the plaintiffs/petitioners submits that the trial is as such at a nascent stage. The Court is yet to apply its mind and thus the Court erred in declining the application filed by the plaintiffs/petitioners seeking amendment of the plaint.

7. Per contra, counsel for the defendants/respondents has emphatically argued that the plaintiffs ought to have been more diligent prior to filing of the plaint. He submits that interim injunction has been granted in favour of the plaintiffs and present amendment is not bona fide but is only a ploy to drag the litigation and to delay the proceedings. He further submits that by way of amendment made in the prayer clause, nature of the suit stands altered and thus the amendment cannot be allowed in view of law laid down by Supreme Court in the case of *Revajeetu Builders & Developers v. Narayanaswamy & Sons & Others*, (2009) 10 SCC 84.

8. I have heard counsel for the parties and have gone through records of the case.

9. Order VI Rule 17 CPC reads as under:

“17. **Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. Interpreting the mandate and scope of provision, Supreme Court in the case of *Rajesh K. Aggarwal and others v. K.K. Modi and others*, (2006) 4 SCC 385 observed as under :

“12. Xxx xxx xxx

This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be

necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

14. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

11. Considering the facts of the present case in the light of aforesaid ratio, the prayer clause in the initial plaint reads as under :

“It is therefore, most respectfully prayed before this Hon'ble Court that the suit for permanent injunction restraining the defendants from blocking the rasta/passage ABCDNEFGHOMIJKL (shown in yellow and red colour as per the rough site plan attached with the plaint) being easementary right to way/passage which is comprised in Khewat No. 47/41, Khatauni No. 50 bearing Khasra No. 1276/861 (0-10), 1269/862 (0-8), 1271/863 (0-8), 1273/865 (0-13), 1275/866 (0-10), 1277/867 (0-8), 1279/868 (0-1), Khewat No. 38/33, Khatauni No. 41 bearing Khasra No. 1416/871 (0-8-10), Khewat no. 36/31/2, 32, Khatauni No. 39 bearing Khasra No. 879 (4-0), Khewat No. 76/68 Khatauni No. 82, bearing Khasra No: 1372/880 (0-8), 1374/883 (0-8), 1376/932 (0-8) leading into the property of the plaintiff fully shown as WXY1Y2Z (shown in green colour in the rough site plan attached with the plaint) comprised in Khewat No. 44/38, Khatauni No. 47 bearing Khasra No. 930, 933, 934, 927, 929 situated at the revenue estate of Jaula Khurd (HB 179), Tehsil Dera Bassi District SAS Nagar as per jamabandi of the

year 2018-19,

And further suit for permanent injunction restraining the defendants from making any type of construction/obstruction in the said rasta/passage ABCDNEFGHOMIJKL (shown in yellow and red colour as per the rough site plan attached with the plaint) may be decreed in favour of the plaintiffs and against the defendants, in the interest of justice

AND/OR

Any other relief may be passed by his Hon'ble Court as it may deem fit, in the facts and circumstances of the present case in favour of the plaintiffs and against the defendants.”

12. The proposed amendment reads as under :

“It is therefore, most respectfully prayed before this Hon'ble Court that the suit for declaration to the effect that the rasta/passage ABCDNEFGHOMIJKL (shown in yellow and red colour as per the rough site plan attached with the plaint) comprised in Khewat No. 47/41, Khatauni No. 50 bearing Khasra No. 1276/861 (0-10), 1269/862 (0-8), 1271/863 (0-8), 1273/865 (0-13), 1275/866 (0-10), 1277/867 (0-8), 1279/868 (0-1), Khewat No. 38/33, Khatauni No. 41 bearing Khasra No. 1416/871 (0-8-10), Khewat no. 36/31/2, 32, Khatauni No. 39 bearing Khasra No. 879 (4-0), Khewat No. 76/68 Khatauni No. 82, bearing Khasra No. 1372/880 (0-8), 1374/883 (0-8), 1376/932 (0-8) leading into the property of the plaintiff fully shown as WXY1Y2Z (shown in green colour in the rough site plan attached with the plaint) comprised in Khewat No. 44/38, Khatauni No. 47 bearing Khasra No. 930, 933, 936, 927, 929 situated at the revenue estate of Jaula Khurd (HB 179), Tehsil Dera Bassi District SAS Nagar as per jamabandi of the year 2018-19 is an easement of necessity for the plaintiffs, since the said passage/rasta is the only right of way leading to the property of the plaintiffs and also being continuously traversed upon since more than 40 years for ingress and outgress,

And further for declaration that the plaintiffs, their heirs, assigns, successors, legal representatives, attorneys or persons claiming under them are entitled to the peaceful use of the said passage ABCDNEFGHOMIJKL being an easement of necessity, without any interruption, hindrance or obstruction of any sort by the defendants their heirs, assigns, successors, legal representatives, attorneys or persons claiming under them,

And further, suit for permanent injunction restraining the defendants their heirs, assigns, successors, legal representatives, attorneys or persons claiming under them from blocking the rasta/passage ABCDNEFGHOMIJKL (shown in yellow and red colour as per the rough site plan attached with the plaint) being easementary right of necessity of way/passage leading into the property of the plaintiff fully shown as WXY1Y2Z (shown in green colour in the rough site plan attached with the plaint) situated at the revenue estate of Jaula Khurd (HB 179), Tehsil Dera Bassi District SAS Nagar as per jamabandi of the year 2018-19,

And further suit for permanent injunction restraining the defendants their heirs, assigns, successors, legal representatives, attorneys or persons claiming under them from making any type of construction/obstruction in the said rasta/passage ABCDNEFG

HOMIJKL (shown in yellow and red colour as per the rough site plan attached

with the plaint), may be decreed in favour of the plaintiffs and against the defendants, in the interest of justice.

AND/OR

Any other relief may be passed by his Hon'ble Court as it may deem fit, in the facts and circumstances of the present case in favour of the plaintiffs and against the defendants.”

13. Thus, it is evident that the declaration is being sought w.r.t. same rasta qua which the injunction was sought initially. Obviously without declaring that the plaintiffs have easementary right, injunction could not have been granted recognizing the right of the plaintiff to use the rasta on the basis of easementary right i.e. right by prescription. Thus, merely by claiming declaratory relief by way of proposed amendment, nature of suit does not get altered. Every amendment in the prayer clause does not amount to alteration in the nature of the suit.

14. I may add here that the plea w.r.t. due diligence is also misconceived and is without merit. Keeping in view that the trial is yet at initial stage and the Court is yet to apply its mind, the proposed amendment would fall within the main provision as contained under Order VI Rule 17 CPC but would not be hit by the proviso thereof.

15. In view of above, the instant revision petition is allowed. Impugned order dated 16th of July, 2024 is set aside. Application filed by the plaintiffs seeking amendment of the plaint is allowed subject to payment of costs of Rs.5,000/- to be paid to the respondents/defendants.

16. Ordered accordingly.

R.M.S.

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*Ordered accordingly.*