

A ABDUL REHMAN & ANR.

v.

MOHD. RULDU & ORS.
(Civil Appeal No. 7043 of 2012)

SEPTEMBER 27, 2012

B [P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Code of Civil Procedure, 1908 – Or. 6 r. 17 r/w. s. 151 – Amendment of plaint – Two sale deeds in favour of appellants as well as respondents by different members of a family in respect of suit property – Appellants filing suit for permanent injunction restraining respondent Nos. 1 to 3 – Subsequent application for amendment of plaint to add relief of declaration of title – Application dismissed by courts below – On appeal, held: The application for amendment is allowed – Amendments necessary for the purpose of determining the real question in controversy should be allowed, if it does not change the basic nature of the suit – A change in nature of relief cannot be considered as change in nature of the suit – The challenge to the sale deed in favour of respondents was implicit in the factual matrix in the un-amended plaint, and hence relief of declaration of title does not change the nature of the suit – Relief claimed is not barred in law and the amendment would not prejudice the respondents.

F Predecessor-in-interest inherited the suit property from his father pursuant to courts order (passed in a suit filed by his sisters claiming their share in the property) which declared that under the applicable customary law of inheritance to the parties, widows and daughters had no inheritance rights in presence of the sons.

Predecessor-in-interest sold the suit property to the appellants. The sale was challenged in suit by four of his children and the same was dismissed by the courts. After

the death of the predecessor-in-interest, the suit filed by his wife for declaration and permanent prohibitory injunction against all her children and application seeking injunction against the appellants from interfering with her possession, were dismissed by the courts. The wife of predecessor-in-interest and his two daughters sold the suit property to respondent Nos. 1 to 3.

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Appellants filed suit for permanent injunction restraining respondent Nos. 1 to 3 from forcibly and illegally dispossessing the appellants from the suit property. Appellants further filed application for amendment of the plaint to include a relief of declaration of title in addition to the permanent injunction. Trial court dismissed the application. Revision against the same was also dismissed by the High Court. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. Parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. [Para 7] [929-D-E]

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2. The power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and

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A circumstances of each case. [Para 8] [930-A-B]

J. Samuel and Ors. vs. Gattu Mahesh and Ors. (2012) 2 SCC 300; Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Ors. (2012) 5 SCC 337 – relied on.

B 3. The challenge to the voidness of the sale deeds in favour of the respondent Nos. 1 to 3 was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. [Para 10] [931-C-D]

D *Pankaja and Anr. vs. Yellapa (Dead) By Lrs. and Ors. AIR 2004 SC 4102 = (2004) 6 SCC 415 – relied on.*

E 4. The relief sought by way of amendment could also be claimed by way of a separate suit on the date of filing of the application. In view of the date of the sale deeds and the date on which the application was filed for amendment of the plaint, the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation. [Para 10] [931-D-F]

G 5. The amendments were necessitated due to the observations made by the High Court in its earlier order to the effect that the appellants' application for ad-interim injunction without seeking cancellation of the sale deeds is not maintainable. This aspect has not been noticed by the trial court as well as the High Court while considering the application filed under Order VI Rule 17 CPC. [Para 11] [931-G-H; 932-A]

H 6. Thee facts that the respondents-transferees were

bound by the previous judgment of the court in this case to the effect that under the applicable customary law of inheritance to the parties therein, widows and daughters have no right of inheritance in the presence of the sons, were specifically stated in the un-amended plaint and, therefore, amendment seeking incorporation of relief of declaration that the sale deeds are void does not change the nature of the suit. Because of those allegations in the un-amended plaint, the same was denied by the defendants in their written statement and the necessary factual matrix as regards the relief of cancellation was already on record and the same was an issue arising between the parties. [Para 12] [932-B-E]

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7. All amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties. [Para 15] [933-A-C]

8. The appellants have made out a case for amendment and by allowing the same, the respondents (Defendant Nos. 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire. Accordingly, the order of the trial court dismissing the application for amendment of plaint as well as the High Court in Civil Revision are set aside. The application for amendment is allowed. [Para 16] [933-D-E]

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Case Law Reference:

(2012) 2 SCC 300	Relied on	Para 8	
(2012) 5 SCC 337	Relied on	Para 8	H

A (2004) 6 SCC 415 Relied on Para 14

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B From the Judgment and Order dated 13.11.2007 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 4486 of 2007.

Manmeet Arora, Kavita Wadia for the Appellants.

Debasis Misra, Jitendra Kumar for the Respondents.

C The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

D 2. This appeal is filed against the judgment and order dated 13.11.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 4486 of 2007 whereby the High Court dismissed the revision filed by the appellants herein and confirmed the order dated 06.06.2007 passed by the Civil Judge (Jr. Division) Malerkotla in an E application filed by the appellants herein for amendment of the plaint.

3. Brief Facts:

F (a) Originally one Jhandu, resident of Village Haider Nagar, was the owner and in possession of land admeasuring 53 bighas 11 biswas at village Haider Nagar, Tehsil Malerkotla and 33 bighas 15 biswas situated at Village Binjoli Kalan, Tehsil Malerkotla. Jhandu died leaving behind Khuda Bux as his son and Aishan and Kaki as his daughters. The mutation of G inheritance was sanctioned in favour of Khuda Bux alone being his son.

(b) Feeling aggrieved by the aforesaid mutation, Kaki and Aishan (daughters of Jhandu) filed Suit No. 280/162 against

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Khuda Bux claiming 9/36 share each in the said lands before the sub-ordinate Judge, 1st Class, Sangrur, Camp at Malerkotla. By order dated 20.12.1971, the sub-Judge dismissed the said suit.

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(c) Challenging the said judgment, Kaki and Aishan filed an appeal being Civil Appeal No. 21 of 1972 before the District Judge, Sangrur. Vide order dated 04.07.1972 passed by the District Judge, the said appeal was dismissed as withdrawn in terms of the compromise arrived at between the parties. According to the terms of the compromise, it was agreed that Khuda Bux shall be entitled to retain possession of land admeasuring 34 Bighas 13 Biswas in village Haider Nagar with the condition that he and his wife Ramzanan will receive the produce of the suit land during their life time but they will have no right to alienate it by way of sale, mortgage or any other form. After the death of Khuda Bux and his wife, the said land would be divided among the four sons of Khuda Bux in equal shares. The remaining land owned by Khuda Bux in Binjoli and Haider Nagar was partitioned by him amongst his four sons in the manner set out in the compromise deed.

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(d) On 12.09.1986, Khuda Bux executed a sale deed transferring ownership and possession of land admeasuring 17 Bighas and 10 biswas in village Haider Nagar in favour of the appellants herein. Challenging the said sale deed, the other two sons and two daughters of Khuda Bux filed a suit before the sub-Judge, Malerkotla. The sub-Judge dismissed the said suit and set aside the sale deed dated 12.09.1986. The said order was further confirmed in appeal.

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(e) After the death of Khuda Bux, Ramzanan - his wife filed Suit No. 308 of 2002 before the Civil Judge, Malerkotla for declaration and permanent prohibitory injunction against all her children. In the above suit, on 24.12.2002, she also filed an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") seeking an injunction against the appellants herein from interfering with

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- A her possession. The said application was dismissed. Against the dismissal of the said application, she filed an appeal being C.M.A. No. 7 of 2003 before the Additional District Judge, Sangrur. By order dated 06.08.2003, the Additional District Judge dismissed the same.
- B (f) Vide registered sale deed Nos. 1810 and 1811 dated 25.08.2003 Ramzanan (wife of Khuda Bux) and Bashiran and Rashidan (daughters of Khuda Bux) sold some lands to respondent No.1 to 3 herein and tried to forcibly dispossess the appellants and respondent No.4 herein from the lands under C their possession.
- (g) The appellants filed Suit No. 320 of 2003 in the Court of Civil Judge (Jr. Division) Malerkotla, for permanent prohibitory injunction restraining respondent Nos. 1-3 herein
- D from forcibly and illegally dispossessing the appellants from the land in dispute.
- (h) In the said suit, the appellants herein filed an application on 17.09.2004 under Order VI Rule 17 read with Section 151 of the Code for amendment of the plaint. The trial Court, by order dated 06.06.2007, dismissed the said application.
- (i) Being aggrieved by the said order, the appellants filed Civil Revision No. 4486 of 2007 before the High Court of Punjab & Haryana. By impugned judgment dated 13.11.2007, the High F Court dismissed the said revision.
- (j) Aggrieved by the said judgment, the appellants have filed this appeal by way of special leave.
- 4. Heard Ms. Manmeet Arora, learned counsel for the G appellants. None appeared for the respondents.
- 5. The only point for consideration in this appeal is whether the appellants herein have made out a case for amendment of the plaint in terms of Order VI Rule 17 of the Code.
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6. Before considering the factual details and the materials placed by the appellants praying for amendment of their plaint, it is useful to refer Order VI Rule 17 which is as under:-

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“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:

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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.”

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7. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

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8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts

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- A 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. This Court, in a series of decisions
- B has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the
- C light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others vs. Gattu Mahesh and Others*, (2012) 2 SCC 300 and *Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others*, (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a
- D case for amendment.

- 9. It is true that originally the appellants have approached the trial Court with a prayer for permanent prohibitory injunction restraining respondent Nos. 1-3 herein from forcible and illegal dispossess of the appellants herein from the land in dispute. Respondent Nos. 1-3 herein (Defendant Nos. 1-3 therein) filed written statement wherein they specifically alleged that they have stepped into the shoes of Ramzanan and Smt. Bashiran and Rashidan on the basis of the sale deeds dated 25.08.2003. It is the claim of the appellants that the above said Ramzanan and Smt. Bashiran and Rashidan have no concern with the ownership of the land in dispute and no right to alienate the suit land to the defendants or anybody else. In view of the stand taken by the defendants in their written statement, in the application filed under Order VI Rule 17 of the Code, the appellants have specifically raised that the alleged sale deed Nos. 1810 and 1811 dated 25.08.2003 in favour of defendant Nos. 1-3 executed by Ramzanan and Bashiran and Rashidan are liable to be set aside and have no effect on the rights of the plaintiffs and Saifur-Rehman qua the suit land and the
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mutation Nos. 781 and 782 sanctioned on the basis of above noted sale deeds dated 25.08.2003 are also liable to be set aside. In view of the claim of the appellants, we verified the necessary averments in the written statement of Defendant Nos. 1 and 3 and we agree with the stand of the appellants.

10. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

11. Learned counsel for the appellants has also brought to our notice that the amendments were necessitated due to the observations made by the High Court in its earlier order dated 19.04.2007 in C.R. No. 3361 of 2007 to the effect that the appellants' application for ad-interim injunction without

- A: seeking cancellation of the sale deeds is not maintainable. This aspect has not been noticed by the trial Court as well as the High Court while considering the application filed under Order VI Rule 17 of the Code.
- B 12. It is also brought to our notice that respondent Nos. 2 and 3 herein – transferees under the sale deed, are the nephews of the appellants herein and the transferors and the purchase of the suit land by them is void to their knowledge as they were equally bound by the judgment dated 20.12.1971 and compromise deed dated 04.07.1972 declaring that under the applicable customary law of inheritance to the parties therein, widows and daughters have no right of inheritance in the presence of the sons. It is the claim of the appellants that in view of the same, respondents – transferees are not bona fide purchasers of the suit land. Learned counsel for the appellants again brought to our notice that these facts were specifically stated in the un-amended plaint and, therefore, amendment seeking incorporation of relief of declaration that the sale deeds are void does not change the nature of the suit. Because of those allegations in the un-amended plaint, the same was denied by the defendants in their written statement and we are satisfied that the necessary factual matrix as regards the relief of cancellation was already on record and the same was an issue arising between the parties.
- F 13. In view of the stand taken by the respondent Nos. 1-3 herein/Defendant Nos. 1-3 in their written statement and the observation of the High Court in the application filed for injunction, we are of the view that the proposed amendment to include a relief of declaration of title, in addition to the permanent injunction, is to protect their interest and not to change the basic nature of the suit as alleged.
- G 14. In *Pankaja & Anr. vs. Yellapa (Dead) By Lrs. & Ors.* AIR 2004 SC 4102 = (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate
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cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title. A

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties. B C

16. In the light of various principles which we have discussed and the factual matrix as demonstrated by learned counsel for the appellants, we are satisfied that the appellants have made out a case for amendment and by allowing the same, the respondents herein (Defendant Nos. 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire. Accordingly, the order of the trial court dated 06.06.2007 dismissing the application for amendment of plaint in Suit No. 320 of 2003 as well as the High Court in Civil Revision No. 4486 of 2007 dated 13.11.2007 are set aside. The application for amendment is allowed. Since the suit is of the year 2003, we direct the trial Court to dispose of the same within a period of six months from the date of receipt of copy of the judgment after affording opportunity to all the parties concerned. The appeal is allowed. No order as to costs. D E F

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Appeal allowed.