

Hari Dass and ors. Vs. Kali Dass

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Court : Himachal Pradesh

Decided On : Dec-06-1978

Reported in : AIR1979HP54

Judge : C.R. Thakur, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revn. No. 49 of 1978

Appellant : Hari Dass and ors.

Respondent : Kali Dass

Advocate for Def. : Manohar Lal Sharma, Adv.

Advocate for Pet/Ap. : K.D. Sood and; Gian Chand Gupta, Adv.

Disposition : Revision allowed

Judgement :

C.R. Thakur, J.

1. This revision petition is directed against the order dated 19-5-1978, passed by Shri K. C. Negi, Sub Judge, Theog, dismissing the application under Order 6, Rule 17 of the Civil Procedure Code filed by Hari Dass defendant for amendment of the written statement. By the intended amendment he wanted to incorporate that the

land covered by khasra number 669/1, measuring 16 biswas, was not pre-emptible in view of the provisions of Section 5 of the Punjab Pre-emption Act (shortly called the Act) as applicable to Himachal Pradesh. The Sub Judge dismissed the application on the ground that the Act applies to banjar land and it is not applicable to the sale of agricultural land being waste land reclaimed by the vendee under Section 5 (b) of the Act. He further observed that the applicant had not in any way said that the banjar land sold by the vendor was reclaimed by the defendant. The ground on which the amendment was sought was not necessary for the determination of the real question of controversy between the parties and, therefore, he rejected the same with costs,

2. The defendant moved this revision petition in this Court. He has contended that the Sub Judge has failed to exercise jurisdiction vested in him by not allowing the application for amendment of the written statement. Further, the court had not exercised the discretion in a judicial manner. The objections sought to be raised by the defendant in the written statement by way of amendment were purely legal.

3. Shri Manohar Lal Sharma, while opposing this revision very strongly contended that there was nothing wrong in the order of the Sub Judge. The petitioner had not disclosed that he had reclaimed the land after he had purchased the same. In so far as the sale of the waste land is concerned the same is pre-emptible, it is only the land which was previously waste and had subsequently been reclaimed which is not preemptible. The defendant had not laid any foundation for the same. Therefore, he contends that the order passed by the Sub Judge was correct.

4. The learned counsel for the petitioner has drawn my attention to the averments made in the application for amendment and I have seen that. Though he has not taken the plea that he had reclaimed it but it is quite evident from the additional pleas in the application, dated 31-3-1978 that the suit of the plaintiff is not competent as regards the land comprised in Khasra number 699/1, measuring 16 biswas situate in Chak Latiana. Therefore, according to him, it was obligatory for the Sub Judge to have allowed this application when the defendant had pleaded that the provisions of the Act were not applicable to the land as envisaged under Section 5 of the Act.

5. I have considered the arguments of the learned counsel for the parties. It is well settled that when considering whether the amendment should be allowed, the Court need not or ought not to go into the alleged falsity of the case in the amendment nor the Court ought to give its findings on the merits of the amendment sought for without first allowing the amendment, frame the issue therein and allowing both the sides to adduce evidence. Here in the instant case the defendants seek the amendment of the written statement and the considerations that weigh with the Court in allowing amendments to the written statement are not to be covered by the same principle as amendment of a plaint. A plaintiff cannot be allowed to amend his plaint so as to alter materially or substitute his cause of action or the nature of his claim, but the same principle will not be applicable to the amendment of the defence or the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Hence the Courts are inclined to be more liberal in allowing amendment of defence than of plaint. (See *Narsingh Prosad Paul v. Steel Products Ltd.*, AIR 1953 Cal 15). In the instant case, as already stated the defendant wanted to set up the defence that the Act was not applicable to the land covered by khasra number 699/1, measuring 16 biswas. It is for the defendant to show at the time of evidence how the provisions of this section are not applicable. It cannot be said that merely because the defendant had failed to disclose the nature of the land the application should have been rejected. It was for the defendant to show at the state of evidence how his contention that the provisions of Section 5 of the Act were not applicable to the land covered by khasra number 699/1. The trial Court it appears had pre-judged this question while dismissing the application that it was not reclaimed by him because there was no such allegation,

6. In *Pathikonda Gopala Rao v. Nagiri Pedda Kitamma* (AIR 1955 Andh Pra 138) it has been observed that the fact that the petitioner makes false statements in the application is no ground for refusing an amendment. Hence the petitioner may not have stated in so many words that the land being waste was reclaimed by him and as such it was exempt from the operation of the Act. But reading the application as a whole it would be quite apparent that he had taken up the plea that the provisions of the Act were not applicable to the land covered by Khasra number

699/1. Therefore, if he has omitted to state this particular fact that the land was reclaimed by him it will not be correct to penalise the petitioner by rejecting his application for amendment,

7. Shri Manohar Lal Sharma, learned counsel for the respondent contended that the material date, when the land is reclaimed, is the date, when the suit was filed, that is on that date, the land should have been reclaimed and if the land has been reclaimed thereafter, then the provisions of Section 5 (b) of the Act will not protect the land from being preempted, and in this behalf he has cited a Division Bench Authority, Balwant Singh v. Kehar Singh (1963-65 Pun LR 972), This authority will not advance the case of the respondent because it is for the trial court after the amendment has been allowed to see whether this land is exempted or saved from the operation of the provisions of Section 5 (b) of the Act or not. But, in so far as the question of amendment is concerned, the court cannot refuse to accord permission for amendment merely because the defendant has not given the details how the land covered by khasra number 699/1 was exempted from the operation of the provisions of the Act. Therefore, on this ground, I feel that the Sub Judge has failed to exercise the jurisdiction vested in him. The court has got to be quite liberal in allowing amendments except where the application for amendment is found to have been made with mala fide intention. Therefore, I set aside the order passed by the Sub Judge dismissing the application for amendment and allow this revision petition. However, this amendment which is ordered to be made as per this application shall be subjected to payment of costs of Rupees 200/-.