

Before B. S. Walia, J.

RAMPHAL—*Petitioner*

versus

RAM KALI AND OTHERS—*Respondents*

C. R. No. 4537 of 2015

August 28 2018

Code of Civil Procedure, 1908—Order VI Rule 17—Amendment of Plaint on the ground that Plaintiff inadvertently omitted to mention details of land in the suit for declaration with consequential relief of permanent injunction—Trial Court dismissed the application on the ground that application filed after three years without providing any explanation of delay and that there was no material to show that applicants could not raise the matter despite due diligence before commencement of trial or even that the amendment as sought was not something which was not in their knowledge from the beginning—Trial Court further recorded that the Applicants wanted to insert claim regarding additional piece of land which in no way could be seen to be a typographical error and that it would change the nature of the suit—Petition allowed on the ground that amendment would have of determining the real question in controversy—Petition allowed with costs of Rs.25,000/-.

Held, that I am of the view that although the petitioner cannot take up the stand that he was not aware of the position as is sought to be incorporated by way of amendment nor can it be said that there is exercise of due diligence but the prayer has to be viewed in the context of the reasoning given for carrying out the amendment i.e. of their being an inadvertent omission Although the petitioner was not diligent but it is settled law that amendment cannot be refused on account of inadvertence mistake and negligence especially where the amendment sought would have the affect of determining the real question in controversy and that in such circumstances, the party seeking amendment can be put to strict terms as to costs. In the circumstances, I am of the view that amendment prayed for ought to have been allowed in the light of decision of Hon'ble the Supreme Court in *Abdul Rehman and another v. Mohd. Ruldu and others*, 2012 (11) SCC 341.

(Para 12)

Narender Pal Bhardwaj, Advocate, *for the petitioner.*

Abhinav Sood, Advocate, for the respondents.

B.S. WALIA, J. (ORAL)

(1) Revision petition has been filed challenging order dated 07.07.2015 (Annexure P5) passed by the learned Civil Judge (Junior Division), Sonapat dismissing application dated 05.09.2013 (Annexure P3) for amendment of the plaint.

(2) Brief facts of the case are that the petitioner and proforma respondent Nos.2 to 10 had filed a civil suit against the respondent No.1- defendant for declaration with consequential relief of permanent injunction on the averments that Late Kanihya i.e. grandfather of proforma respondent No.2 had three sons namely Fateh Singh, Shiv Raj and Rampal (i.e. the petitioners herein) out of whom Shiv Raj died issueless leaving behind his widow Smt. Ramkali i.e. (respondent No.1-defendant). It was further averred in the plaint that the petitioner and proforma respondent Nos. 2 to 10 were owners in possession of agricultural land falling to their respective shares as comprised in Khewat No.357/360, Khatoni No.659 to 660 Rect. and Killa Nos. 45//23/2 (4-0), 18/1 (2-4), 23/1 (4-0) total measuring 10 kanals 04 marlas and in Khewat No.359/352 Khata No.662, Rect. and Killa Nos.42//13 (6-19), 14/1/1 (2-0), 14/1/2 (2-0) total measuring 10 kanals 19 marlas as mentioned in the revenue record and further that the father of proforma respondent Nos.2, 4, 5, and 6 and grand-father of proforma respondent Nos.7 to 10 and father-in-law of proforma respondent No.3 and plaintiff No.10 Smt. Kitabo, widow of Fateh Singh and plaintiff No.11 i.e. petitioner herein and Late Sh. Shiv Raj are/were owners in possession of the agricultural land as mentioned above in equal share i.e. 1/3rd share each situated in the revenue estate of village Malikpur, Tehsil and District Sonapat as per Jamabandi for the year 2004-05. It was also mentioned in the plaint that Late Sh. Shiv Raj who died issueless, used to reside with his real nephew i.e. proforma respondent No.2 and the petitioner (i.e. plaintiff No.11) and they lived jointly and looked after said Late Sh. Shiv Raj till his death and due to love and affection Late Sh. Shiv Raj executed a Will in favour of petitioner (plaintiff No.11) and proforma respondent Nos.2 to 10 i.e. (the plaintiff Nos.1 to 10) in the civil suit as well as respondent No.1-defendant Smt. Ramkali, his widow, in equal share on 14.02.2004 and

died on 22.06.2009. It is further mentioned in the plaint that respondent No.1- defendant Smt. Ramkali in collusion with some mischievous elements as well as the revenue officials got sanctioned a mutation bearing No.3308 dated 22.06.2009 in her favour of the entire share of Late Sh. Shiv Raj and the same was wrong, illegal, null and void and liable to be set aside as respondent No.1-defendant was only entitled to the extent of 1/12th share of the property left by Late Sh. Shiv Raj. The genuine request of the petitioner and proforma respondent Nos.2 to 10 to respondent No.1-defendant Smt. Ramkali not to alienate the suit property more than her share on the basis of wrong and illegal mutation sanctioned in her favour having been refused, the petitioner and proforma respondent Nos.2 to 10 filed a civil suit with the prayer that decree be passed for declaration that the plaintiffs were owners in possession of the land as detailed in para No.1 of the plaint qua their respective shares i.e. 1/12th share each over the property of late Sh. Shiv Raj and that mutation bearing No.3308 dated 22.06.2009 was wrong, illegal, null and void and liable to be set aside and not binding upon the rights of the petitioner and proforma respondent Nos.2 to 10.

(3) The civil suit was filed on 04.03.2010. On 05.09.2013, the case was fixed for plaintiffs' evidence on which date an application was filed under Order 6 Rule 17 CPC for permission to amend the plaint on the ground that inadvertently there had been omission to mention details of land in paragraph No.1 of the plaint. The detail of the amendment sought to be carried out is as under:-

“1/2 share of Shiv Raj son of Kanhiya out of 53 shares in the land comprised in Khewat No.361/354 Khata No.664, 665 Rectangle and Killa No.42/12 (8-0) and 42/19 (8-0) situated at revenue estate of village Malikpur (Sonapat).”

(4) Prayer is for permission to carry out the amendment which was occasioned on account of typographical omission.

(5) The application was opposed on the ground that number of opportunities had been availed by the applicants/plaintiffs (petitioner herein and proforma respondent Nos.2 to 10) but they did not lead their evidence and the application had been filed merely to prolong the case, that the amendment could be made only prior to the commencement of the trial but in the instant case, aforementioned stage had already passed. The application was dismissed by the learned Civil Judge (Jr. Div.), Sonapat on the ground that the application had been filed more than three years after the institution of the suit without providing any

explanation for delay and neither it had been pleaded nor could it be gathered from the circumstances that the applicants could not raise the matter despite due diligence before commencement of trial or even that the amendment as sought was not something which was not in the knowledge of the applicants (i.e. petitioner herein and proforma respondents No.2 to 10) from the beginning. The learned Civil Judge further recorded that the applicants (i.e. petitioner herein and proforma respondents No.2 to 10) by way of the application wanted to insert claim regarding additional piece of land which in no way could be seen to be a typographical error and that it would change the nature of the suit. Accordingly, the application was dismissed.

(6) Learned counsel for the petitioner contended that it was settled law that the rules of procedure were intended to be a handmaid in the administration of justice and that a party could not be denied permission to amend solely on account of mistake, negligence, inadvertence or even infraction of rules of procedure and that permission to amend could be granted unless it could be established by the opposing party that the party applying for amendment was acting mala fide or that by his blunder, party seeking amendment had caused injury to the opposite party which could not be compensated for by an order of costs.

(7) Learned counsel contended that a perusal of the plaint revealed beyond an iota of doubt the stand of the petitioner and proforma respondent Nos.2 to 10 that they were owners in possession of agricultural land detailed in paragraph No.1 in equal share i.e. 1/3rd share each i.e. share of Fateh Singh, Late Sh. Shiv Raj and the petitioner/plaintiff No.11 while in paragraph No.2 it was categorically mentioned that Late Sh. Shiv Raj had been taken care of by proforma respondent No.2 and petitioner/plaintiff No.11 and that said Late Sh. Shiv Raj had executed a Will in favour of the petitioner/plaintiff and proforma respondent Nos.2 to 10 as also respondent No.1-defendant in equal share on 14.02.2004 and had died on 22.06.2009 and further that in paragraph No.3 of the plaint it was categorically mentioned that despite the entitlement of respondent No.1-defendant only to the extent of 1/12th share of the property left by her husband Late Sh. Shiv Raj, she had in collusion with some mischievous elements and the Revenue Officials got sanctioned mutation bearing No.3308 dated 22.06.2009 of the entire share of Late Sh. Shiv Raj in her favour. In the aforementioned background it is contended that once it is the stand of

the plaintiffs (i.e. petitioner herein and proforma respondent Nos.2 to 10) that a Will was executed by Late Sh. Shiv Raj in favour of the plaintiffs and respondent No.1-defendant in equal share and further that the respondent No.1-defendant Smt. Ramkali was entitled only to 1/12th share of the property left by Late Sh. Shiv Raj but she had fraudulently got mutation bearing No.3308 dated 22.06.2009 executed in her favour of the entire share of Late Shiv Raj which was illegal, null and void and liable to be set aside, amendment prayed for was liable to be allowed.

(8) Learned counsel for the petitioner contended that the omission was to mention the property owned by Late Sh. Shiv Raj, husband of respondent No.1-defendant Smt. Ramkali i.e. one half share in the 53 shares in land comprised in Khewat No.361/354 khata No.664, 665 Rect. and Killa No.42/12 (8-0) and 42/19 (8-0) situated at Revenue Estate of village Malikpur, Sonapat which had inadvertently been omitted from being mentioned in the plaint. Learned counsel contended that as per Jamabandi for the year 2004-05 in respect of the aforementioned khewat, khata and killa numbers of land, the share of Late Sh. Shiv Raj and the petitioner (i.e. plaintiff No.11) is in equal shares. In other words 26½ shares in the name of petitioner and 26½ shares in the name of deceased Shiv Raj and that the half share of Shiv Raj in the aforementioned land was to be shared amongst the beneficiaries named in the Will dated 14.02.2004 in equal share. In other words, the one half share of Shiv Raj in the land situated in the Revenue Estate of village Malikpur, Sonapat in Khewat No.361/354, Khata Nos.664, 665, Rect. and Killa Nos.42/12 (8-0) and 42/19 (8-0) was to be shared in the ratio of 1/12th share each amongst the 11 plaintiffs and respondent No.1-defendant as per averments in paragraph Nos.2 and 3 of the plaint. Learned counsel contended that in the circumstances, the amendment was merely explanatory of the position as had already been set out in the plaint and was necessitated on account of inadvertent typographical omission in mentioning the aforementioned land in the plaint. Learned counsel further contended that in the circumstances, it could not be, by any stretch of imagination, said that the same would change the nature of the suit. On the basis of the same, learned counsel contended that the impugned order was legally unsustainable.

(9) Per contra, learned counsel for respondents reiterated the reasoning on the basis of which the application for amendment was dismissed by the learned Civil Judge.

(10)I have considered the submissions of learned counsel appearing for the parties.

(11)Admittedly, it is the stand of the plaintiffs that plaintiff No.11 (i.e. the petitioner herein) and LRs of Fateh Singh and Shiv Raj (i.e. proforma respondent Nos.2 to 10) are entitled to property detailed in paragraph No.1 of the plaint. The same makes reference of the properties situated in two different Khewats in village Malikpur, Tehsil and District Sonapat.

(12)Claim in paragraph No.1 of the plaint is that the aforementioned property was to be divided in three shares i.e. in the name of Fateh Singh, Shiv Raj and Ram Phal i.e. $1/3^{\text{rd}}$ share each and further that proforma respondent Nos.2, 4, 5 and 6 and grandfather of proforma respondent Nos.7 to 10 i.e. Fateh Singh and Fateh Singh (i.e. father-in-law of proforma respondent No.3 and husband of plaintiff No.10) and the petitioner (i.e. plaintiff No.11) and Late Sh. Shiv Raj were owners in possession of $1/3^{\text{rd}}$ share each in the aforementioned property. Further that on the basis of Will executed by Shiv Raj who died issueless, the plaintiffs and respondent No.1-defendant were to share equally i.e. in the ratio of $1/12^{\text{th}}$ share in the property left behind by Late Sh. Shiv Raj. Although, it is mentioned in paragraph No.3 of the plaint that the respondent No.1-defendant Smt. Ramkali got sanctioned a mutation bearing No.3308 dated 22.06.2009 in her favour of the entire share of Late Sh. Shiv Raj and the same was illegal, null and void and liable to be set aside and not binding upon the rights of the plaintiffs as respondent No.1-defendant was only entitled to the extent of one half share of the property left by Late Shiv Raj, yet land comprised in third khewat i.e. Khewat No.361/354 khata No.664, 665, Rect. and Killa No.42/12 (8-0) and 42/19 (8-0) situated at revenue estate of village Malikpur, Sonapat had inadvertently been omitted from being mentioned in the plaint. It is the omission which is sought to be incorporated by making the amendment as is detailed hereinabove.

(13)I am of the view that although the petitioner cannot take up the stand that he was not aware of the position as is sought to be incorporated by way of amendment nor can it be said that there is exercise of due diligence but the prayer has to be viewed in the context of the reasoning given for carrying out the amendment i.e. of their being an inadvertent omission to mention the third parcel of land in respect of which reference has already been made in paragraph Nos.2

and 3 of the plaint where it is also mentioned that the plaintiffs and respondent No.1-defendant are entitled to 1/12th share each in the estate of deceased Shiv Raj. The amendment as sought to be made to mention the third parcel of land left out, is the same in respect of which mutation No.3308 dated 22.06.2009 was made in favour of respondent No.1-defendant Ramkali on 22.06.2009. Although, the petitioner was not diligent but it is settled law that amendment cannot be refused on account of inadvertence mistake and negligence especially where the amendment sought would have the affect of determining the real question in controversy and that in such circumstances, the party seeking amendment can be put to strict terms as to costs. In the circumstances, I am of the view that amendment prayed for ought to have been allowed in the light of decision of Hon'ble the Supreme Court in *Abdul Rehman and another versus Mohd. Ruldu and others*¹. Relevant extract of the Abdul Rehman's case (supra) is reproduced as under:-

“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 large interests of doing full and complete justice between the parties.”

(14)Accordingly, impugned order 07.07.2015 (Annexure P5) passed by the learned Civil Judge (Junior Division), Sonapat dismissing application dated 05.09.2013 (Annexure P3) for amendment of the plaint is set aside and prayer for amendment of the plaint is allowed subject to payment of costs of T25,000/-.

(15)Accordingly, the revision petition is allowed in the aforementioned terms. Parties to put in appearance before the learned trial Court on 01.10.2018 for further proceedings in accordance with law.

Manish Jain

¹ 2012 (11) SCC 341