agreement between the parties would not make any difference. This was so observed in *Baij Nath's case* (3) (supra) at page 734 of the report in the following words:—

> "... ... ... where a decree is passed in consequence of a compromise and gives effect to the will of the parties without any adjudication by the Court itself, the contract cannot be said to have any greater sanctity in spite of the fact that the command of a Judge has been added to it, and the contract in cases of this kind must be taken to have been adopted with all its incidents, and so as it is open to a party to plead that a contract was void or unenforceable it would be equally open to him to urge that the contract, although embodied in a decree, still remains void and unenforceable."

(8) I am, therefore, of the view that the so called fair rent in the earlier litigation could not be held to be a fair rent under section 4 of the Act, which would be treated as the fair rent of the premises binding on all the tenants who may come there. Thus there being no "fair rent" fixed in the eye of law, there is no question of any prosecution or a complaint being filed under section 19 of the Act.

(9) In view of the above, I accept this revision and set aside the order of the Rent Controller. There would be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Harbans Singh, C.J.

RAGHVIR PARSHAD ETC.,—*Petitioners.*

versus.

CHET RAM,—*Respondent.*

Civil Revision No. 850 of 1970.

April 20, 1971.

Code of Civil Procedure (Act V of 1908)—Order 6 Rule 17—Plaintiff filing a suit for possession on the basis of inheritance—Amendment of the plaint

sought to change the basis of the suit from inheritance to a will by the last owner—Such amendment—Whether to be allowed—Date of the institution of the suit—Whether to be the date when application for amendment of the plaint is made.

Held, that when a plaintiff brings a suit for possession of property claiming to be heir of the last owner, and subsequently he comes to know about the execution of a will in his favour, which will was in existence on the date the suit is brought, there is no reason why he should be prevented from having that cause of action adjudicated upon. If such a plaintiff seeks the amendment of the plaint to change the basis of the suit from inheritance to will, the amendment should be allowed. The mere fact that cause of action of the suit is changed, is no ground *per se* for disallowing the amendment. The amended suit shall, however, be treated as having been filed on the date on which the application for amendment is given and not when the original suit was filed.

Petitioner under Section 115 of the Code of Civil Procedure for revision of the order of Shri O. P. Gupta, Sub-Judge 1st Class, Jagadhri, District Ambala dated the 2nd June, 1970 rejecting the application for amendment.

MANMOHAN SINGH LIBERHAN, ADVOCATE, for the petitioners.

S. K. GOYAL, ADVOCATE, for the respondent.

JUDGMENT

HARBANS SINGH, C.J.—(1) Raghvir Parshad and his sister, Tara Wati, brought a suit against Chet Ram seeking possession of the house in dispute, which was in possession of Chet Ram, on the ground of title alleging that the house, in fact, originally belonged to Shrimati Kamla Devi, which, on her death, devolved on their father, Atma Ram, and that after the demise of Atma Ram, it devolved on the plaintiffs.

(2) The suit was resisted by Chet Ram, who alleged that when he was ejected out of a house, which was in his occupation, he came across the house in dispute, which was in a dilapidated condition, occupied the same in his own right and for the last 18 years or so has been in possession thereof and that, consequently, he had acquired a title for more than 12 years in an open manner. He also denied the title of the plaintiffs to the property in dispute.

(3) After 8 witnesses had been examined by the plaintiffs, an application was filed for amendment of the plaint. It was averred that, in fact, Shrimati Kamla Devi had executed a will on 9th April, 1964, in favour of Raghvir Parshad plaintiff No. 1 and that this fact was not known to the plaintiffs on the date when the suit was filed and, consequently, they sought amendment of the plaint by claiming title to the house under the will rather than on inheritance. Amendment of certain paragraphs consequential on this change of cause of action was also sought to be made by deleting the words 'plaintiff No. 2' wherever it occurred.

(4) This application was rejected, the ground taken being that the amendment, if allowed, would change the nature of the suit. Being aggrieved by this order, the plaintiffs have filed this revision.

(5) No doubt originally the plaintiffs based their case on inheritance and now they want this claim to be altered to be one under a will. In both cases, however, the nature of the suit is one for possession and the defendant admittedly has no title except one of being in possession. Both originally and now the case of the plaintiffs is that the house belonged to Shrimati Kamla Devi and originally it was claimed that by inheritance it came down to both the plaintiffs and now it is stated that by virtue of the will it came to be owned by plaintiff No. 1 alone.

(6) The learned counsel for the defendant-respondent vehemently urged that no amendment should be allowed if it involves change of cause of action. He distinguished the latest Supreme Court authority in *Jai Ram-Manohar Lal* v. *National Building Material Supply, Gurgaon* (1) on the ground that that was a case where the amendment sought was only of a formal nature. That was a case where the plaintiff, who was a manager of a joint Hindu family and was carrying on its business under business name, brought a suit in that business name. When an objection was taken, he sought amendment of the plaint stating that he himself had intended to file and had in fact filed the action on behalf of the family in the business name. Their Lordships of the Supreme Court not only observed that this amendment should have been allowed, but also

(1) A.I.R. 1969 S.C. 1267.

held that in a case like that, where there was only misdescription of the plaintiff; if the plaint is amended by substituting the real plaintiff, the plaint shall be deemed to have been instituted in its amended form on the date it was originally instituted and that no question of limitation arose.

(7) On behalf of the petitioners, however, reliance is placed on the general observations made in the abovementioned judgment. In paragraph 5 of the report their Lordships observed as follows:—

> " ... ... Rules of procedure are intended to be a hand-made to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide*, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

(8) So far as the question of cause of action is concerned, there is a judgment of Kapur J., as he then was, in *Messrs Watikns Mayor and Company, Jullundur* v. *Registrar of Trade Marks, Bombay and another* (2). The head-note (i) is in the following terms:—

> "However negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated for by costs.
>
> A plaintiff may add a new cause of action and the defendant may add a new defence. Even a new case may be allowed to be introduced."

(9) Thus the mere fact, that the cause of action has been changed, is no ground *per se* for disallowing the amendment.

(2) 1952 P.L.R. 176.

(10) Reference was made to a Division Bench judgment of this Court in *Kartar Singh Wazir Singh* v. *Sardara Singh Wazir Singh* (3). That was, however, a case where the suit had been dismissed in the trial Court as well as in the lower appellate Court and it was in the regular second appeal that a request was made for the amendment of the plaint, which would have necessitated a fresh trial of the entire case. The facts of each case have to be taken into account in deciding whether the amendment should or should not be allowed.

(11) In the present case admittedly the defendant is a squatter having absolutely no title except the one which he is alleged to have acquired by lapse of time and by being in adverse possession for more than the statutory period. The learned counsel urged that even the plaintiffs have failed to show their connection with Shrimati Kamla Devi and there is nothing to show that the will is genuine or forged. That is a question of merits. As already indicated, plaintiff No. 1 along with his sister laid a claim to the house on the basis of inheritance. If they came to know about the execution of the will subsequently and which will was in existence on the date the suit was brought, there is no reason why they should be prevented from having that cause of action adjudicated upon. The defendant can be fully compensated with costs so far the expenses incurred by him are concerned.

(12) There is only one more point and that is with regard to limitation. It was urged on behalf of the defendant that if a new suit had been brought when the amendment application was given, he could have resisted the suit by alleging that by that date his adverse possession had matured into a good title by the expiry of the statutory period and that if the amended suit is treated to have been filed on the date on which the original suit was filed, he would suffer irreparable loss by being denied the defence of limitation.

(13) I feel that there is force in this point and as the Court can allow amendment on certain terms and conditions, I accept this revision, set aside the order of the Court below and allow the amendment on payment of Rs. 200 as costs. I further direct that the amended suit shall be treated as having been filed on the date on

(3) A.I.R. 1960 Pb. 255.

which the application for amendment was given. Parties are directed to appear before the trial Court on 17th May, 1971, on which date Rs. 200, the costs awarded, would be paid. If the costs are paid, the amendment, as prayed, shall be allowed. Time will be given to the plaintiff to put in the amended plaint and thereafter time will be given to the defendant to put in the written statement. Fresh issues will be settled and with the consent of the parties the evidence already led may be treated as evidence in the case. Parties will be given an opportunity to lead evidence on the new issues that may arise in the case. The case will be decided expeditiously. Records of the trial Court were not sent for. A copy of this judgment will be sent to the trial Court immediately. There would be no order as to costs.

K. S. K.

CIVIL MISCELLANEOUS.

Before A. D. Koshal, J.

KARTAR CHAND BHALLA,—*Petitioner.*

versus.

THE STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 2743 of 1970.

April 23, 1971.

Punjab Gram Panchayat Act (IV of 1953)—Sections 10, 15 and 102—Simultaneous suspension of a Sarpanch and enquiry against him directed by a single order—Whether legal—Successor to a suspended Sarpanch—Whether can be appointed under section 15.

Held, that no doubt it is only during the course of an enquiry envisaged by sub-section (2) of Section 102 of the Punjab Gram Panchayat Act, 1952, that the Deputy Commissioner may exercise his power of suspension of a Sarpanch and that if no such enquiry has been ordered, occasion for the exercise of the power of suspension by the Deputy Commissioner under sub-section (1) of section 102 of the Act, would not arise. This, however, has no application to a case in which the enquiry and the suspension are covered by directions contained in a single order of the Deputy Commissioner. Such an order must be read as a whole. Thus where the suspension and the enquiry are simultaneous and directed by a single order, it cannot be said that when