

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 2018/2013

RAB NAWAZ & OTHERS.

Versus

HAMID RAZA & OTHERS.

Petitioners by: Mr. Muhammad Ishtiaq Ahmed Raja, Advocate.

Respondents by: Mr. Ajmal Khan Khatak, Advocate.

Date of Hearing: 11.06.2020.

LUBNA SALEEM PERVEZ, J: Present writ petition has been filed to assail judgment dated 08.04.2013, passed by Learned Additional Sessions Judge, East, whereby, revision petition filed by the present respondents against order dated 08.06.2011, accepting application for amendment in the plaint, passed by the learned Civil Court, was allowed.

2. As per record, facts of the case are that the Petitioners filed suit for declaration and permanent injunction in respect of suit land, claiming ownership on the basis of gift from father which was mutated vide mutation No. 5031 dated 19.01.2000. The defendant contested the suit through written statement filed on 28.04.2004. They also filed registered sale deeds dated 26.05.1996, in respect of suit land purchased from the father of Petitioners, along with written statement. The Petitioners thereafter filed application under Order VI Rule 17 CPC on 10.12.2010 for amendment in plaint to challenge the registered sale deed dated 26.05.1996 on the ground of being executed through fraud and fabrication and simultaneously sought amendment in prayer for declaring the said sale deeds as illegal, null and void. The application for amendment in plaint was allowed by the Learned Civil Judge 1st Class, Islamabad, vide order dated 08.06.2011. The defendant assailed the said order before the Learned Additional Sessions Judge, East, Islamabad, through Civil Revision u/s 115 CPC, who vide judgment dated 08.04.2013 accepted the revision petition and held order dated 08.06.2011 not

sustainable, whereby the amendment in plaint was allowed under Order VI Rule 17 CPC, not sustainable. Hence present writ petition.

3. Learned Counsel for the Petitioner argued that the suit for declaration and permanent injunction was filed on the basis of gift deed and mutation No. 5031 dated 19.01.2000, however, amendment of the plaint through application under Order VI Rule 17 CPC was necessary when it came to their knowledge that the respondents are contesting the suit on the strength of registered sale deeds claiming purchase of the suit land from their father on 26.05.1996. Learned counsel contended that impugned judgment dated 08.04.2013 is against the law and facts which is based on misreading and non-reading of record; that the provisions of Order VI Rule 17 CPC permit the party to amend pleading at any stage of the proceedings with the leave of the court and dismissal of application on the ground of filing the same at belated stage is against the administration of justice. Learned Counsel in support of his contention relied on the judgment of Hon'ble Lahore High Court re: *Faisalabad Electric Supply Company Ltd vs. Munir Ahmad Ranjha (2020 CLC 68)* and submitted that application for amendment of plaint cannot be dismissed on the point of limitation.

4. On the other hand Learned Counsel for the Respondent defended the impugned order and submitted that the amendment sought in pleadings as well as in prayer clauses would prejudice the case of the Respondents as the Petitioner has prayed for cancellation of documents duly registered by the competent authority alleging connivance and fraud; that the suit land was purchased by the Respondents from the father of the Petitioners through registered sale deed way back in 1996 and challenging the said deeds by amending the pleading in the suit in the year 2010 applying the provisions of Order VI Rule 17 CPC is legally not tenable as it would change the nature of the suit being in divergence of claim in the suit. Learned counsel in support of his contentions placed reliance on the judgment of Hon'ble Supreme Court titled *Abaid Ullah Malik vs. Additional District Judge, Mianwali & Others* reported as *(PLD 2013 SC 239)*.

5. Arguments heard and record perused along with judgments relied upon by the learned Counsel for the parties with their able assistance.

6. Perusal of the impugned judgment revealed that the civil revision petition was allowed by learned Additional District Judge while setting aside the order

dated 08.06.2011, on the ground that application for amendment of pleadings under Order VI Rule 17 CPC was filed at belated stage. It would be advantageous to reproduce the operating portion of the impugned judgment dated 08.04.2013 which reads as follows:-

“.....It is important to note that the alleged donor of the respondent is their real father. It is also important to note that at the time of the institution of suit, the registered sale deed etc. were already attested in favour of the petitioner and neither the respondents incorporated detail of these registered deeds nor after submission of the written statement by the petitioner, they submitted any application for amendment and they remained mum for almost 7 years. It is very important to note that registered sale deed in favour of the petitioner, if attested on the basis of fraud, then fraud is committed with the father of the respondents i.e. donor namely Sakhi Muhammad. If any fraud committed then the cause of action accrued to him and as at the time of alleged Hibba in favour of respondents the said alleged fraudulent document was in the field, therefore only Sakhi Muhammad could challenge the documents and the present respondents have no locus standi to challenge the documents on his behalf, but he has not challenged the documents by himself. Moreover as I discussed above, the written statement with specific plea was submitted on 28.4.2004, therefore limitation started right from the date.”

Record transpired that the Petitioner has initially filed the Civil Suit for declaration and permanent injunction regarding suit land on 25.09.2003; the written statement by the respondents along with registered sale deed were filed on 28.04.2004; the suit was dismissed for non-production of evidence on 18.07.2005; upon appeal the suit was remanded back to the trial court in November 2005; the application for amendment in plaint under Order VI Rule 17 CPC was filed by the Petitioner on 10.12.2010. When viewed in this background and circumstances of the case, the question arises as to why the Petitioner remained silent for so many years when the petitioners through written statement filed by the Respondents came to know about sale of suit land through registered sale deeds and they still waited almost seven years to file application under Order VI Rule 17 CPC. Moreover, I am in agreement with the contention of the Learned Counsel for the Respondent that grievance of the Petitioner is a new cause of action as it pertains to the obtaining and registering the sale deeds through fraud and it involves allegation of misrepresentation before government agency, hence, agitating a new ground and making out a new case through amendment in pleadings is outside the scope of Order VI Rule 17 CPC. The Hon'ble Supreme Court in the judgment re: ***Abaid Ullah Malik vs. Additional District Judge, Mianwali & Others (PLD 2013 SC 239)*** has

discussed the object and scope of Order VI Rule 17 CPC regarding amendment in the pleadings and held that:-

“There can be no cavil that the court has ample authority and discretion to allow amendments of the pleadings in appropriate cases, which authority may be exercised at any stage of the proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction. There also can be no disagreement that the power and authority in allowing the amendments shall be liberally exercised, however, keeping in view the salutary rule, that the proposed amendment(s) is/are expedient for the purposes of determining the real questions in controversy between the parties, it should not alter the nature of the suit or the defence. Similarly, at the same time some important fundamentals should also not be lost in sight and must be kept in mind by the courts while exercising such authority, in that, the amendment sought/proposed must not be tainted with dishonesty of purposes; it is not meant to withdraw and resile from an admission made in the pleadings of the parties; it should not cause prejudice to the opposite side, particularly to deprive such (opposite) side of a benefit attained by it from the evidence adduced on the record by the party asking for the amendment; the conduct and the motive of the party and the object/purpose behind the request for the amendment.”.

7. Learned Counsel for the Petitioner, in support of his arguments has referred the case law reported as ***Faisalabad Electric Supply Company Limited Versus Munir Ahmad Ranjha [2020 CLC 68 (HC Lah)]***, whereby the petitioner was allowed amendment in the pleadings to cure the defective pleading by giving details of fraud, misrepresentation and lack of jurisdiction. Perusal of the contents of ruling *ibid* shows that the judgment is based on its own different as well as peculiar facts. However, the Hon'ble Court on the basis of various precedents of the superior courts has reproduced certain principles for allowing or declining the amendment in plaint under the provisions of Order VI Rule 17 CPC, which are given as under:-

- (i) *The power under Order VI, Rule 17 is discretionary and should be used judicially on consideration of special circumstances of each case and the necessary conditions are (a) if the amendments do not cause injustice to other side; (b) amendment is necessary for determination of real question in controversy;*
- (ii) *No party can be allowed to introduce new cause of action by way of amendment;*
- (iii) *The Court ordinarily should not allow the amendment unless it is found that the applicant was acting mala fide or injustice or injury was likely to cause to the opposite party which could not be compensated by cost;*
- (iv) *Where due to subsequent events original relief sought became inappropriate for deciding the controversy, the amendment can be allowed to shorten the litigation;*
- (v) *The Court can allow to cure defective pleadings so as to constitute a cause of action where there was none, provided necessary conditions*

such as payment of additional court-fee or costs of other side are complied with except when there is lapse of time or new cause of action is created;

- (vi) Where the Court is lacking inherent jurisdiction over the subject matter, it cannot allow amendment to bring the suit within its jurisdiction;*
- (vii) Introduction of inconsistent or contradictory allegations cannot be allowed;*
- (viii) Delay for itself, cannot be adequate reason for refusing amendment.”.*

When present case is examined in the light of the above principles, it transpired that the proposed amendments are based on after thoughts as the facts desired to be incorporated already existed at the time of filing of suit in the year 2003; the sale of the suit land has been registered in the year 1996, therefore, their cancellation cannot be legally challenged in the year 2010 in a suit pending decision for declaration and permanent injunction, relying on a gift deed; the prayer for cancellation of registered sale deed on the basis of fraud and misrepresentation is altogether a new cause of action and cannot allowed to be introduced by way of amendment in grounds and prayer clauses. Moreover, the record shows that the suit of the petitioner, after its dismissal, on 18.07.2005 was remanded back by the appellate court only to the extent of allowing the petitioner an opportunity to produce evidence in his favour, as earlier the suit was dismissed due to non production of evidence, after framing of the issues. The scope of proceedings before the trial Court thus cannot be extended when the case is remanded back with specific directions.

8. Keeping in view the facts and circumstances of the case, I am of the considered view that impugned judgment dated 08.04.2013 is well reasoned which does not suffer from any legal infirmity or irregularity. Instant writ petition is, therefore, **dismissed** accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on 08.07.2020.

JUDGE