

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.34972 of 2015

Bashir Ahmad Vs.

Addl. District Judge, etc.

JUDGMENT

Date of hearing: - 06.11.2018

Petitioner by: - Masood A. Malik, Advocate.

Respondents No. 2 to 4 by:- Rao M.I. Zafar Khan, Advocate.

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SHAHID WAHEED, J:- Challenge in this constitutional petition is to the order dated 03.06.2015 whereby the Revisional Court by setting aside the order dated 01.07.2014 of the Trial Court allowed the application filed by the plaintiffs (respondents No.2 to 4) under Order VI Rule 17 CPC seeking amendment in the plaint.

2. This constitutional petition has arisen in the background that the plaintiffs i.e. respondents No.2 to 4 in the year 1990 instituted a suit for permanent injunction which was later on got amended by them and thereby sought decree for declaration of title in respect of land measuring 170- kanals 17-marlas with the plea that their father Major Samiullah Khan gifted the same to them vide mutation No.1866 dated 24.04.1974. It was also maintained in the plaint that sale deed bearing No.601 dated 06.07.1986, in respect of suit land, executed by respondents No.5 to 7 and one Memal son of Sami Singh in favour of present petitioner, which was subsequently recorded in the revenue record vide mutation No.2430 dated 07.03.1999 was result of fraud. The suit was contested by filing written statement. On pleadings issues were framed and evidence was led. After making final arguments in the case the plaintiffs (respondents No.2 to 4) filed an application under Order VI Rule 17 CPC before the Trial Court seeking amendment in the plaint with the following assertion:-

“That at the ends of para 1-B, the same is inadvertently written that the father of the plaintiff made Hibba Nama in favour of the plaintiffs, actually the plaintiffs purchased the suit land from one Muhammad Azam who was attorney of Mst. Sughri, Momal, Malooki, Shakoori and that is why the mutation no.1866 was sanctioned in favour of plaintiffs and in Mutation No.1866 the sale transaction is mentioned and the plaintiff purchased the suit land in consideration of Rs.5000/-. Copy of Sale Mutation is already annexed and exhibited with the plaint. However, the word of Hiba has been written mistakenly, in fact, it was the Sale Transaction and the same is result of typing mistake and due to over sight it was not corrected earlier, that it will meet the ends of justice, to allow the plaintiff to amend the plaint by substituting the word of “Sale” in the plaint instead of Hibba and the contents of Para No.2 of the application may kindly be allowed to insert at the ends of 1-B of the plaint and the same may also be allowed in the prayer clause of the plaint also.”

The above application was resisted by the present petitioner. On consideration of the matter, the Trial Court came to the conclusion that the application under Order VI Rule 17 CPC was not only belated but would also bring change in the claim of the plaintiffs. On the basis of said conclusion the application seeking amendment in the plaint was dismissed vide order dated 01.07.2014. The respondents No.2 to 4 thereupon filed an application under Section 115 CPC before the Addl. District Judge, Lahore and sought revision of the order dated 01.07.2014. The Revisional Court reversed the findings of the Trial Court and allowed the application in revision vide order dated 03.06.2015 on the ground that proposed amendment would not bring any change in the nature of the pleading and relief claimed by the plaintiffs. So, this petition.

3. Objecting to the findings of the Revisional Court, the petitioner’s counsel submits that at the fag end of the trial of the suit the plaintiffs (respondents No.2 to 4) could not be allowed to make any amendment in the plaint which was inconsistent with the statement made by the witnesses before the Trial Court. Responding to said objection learned counsel appearing on behalf of the plaintiffs, i.e. respondents No.2 to 4 submits that the plaintiffs claimed declaration of title on the basis of mutation No.1866 dated 24.04.1974 through which the suit land

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The third witness was Meraj Din PW-3. His statement was to the following effect:

مدعیان کو زمین ہبہ کے ذریعے ملی تھی یہ ہبہ ان کے والد سمیع اللہ نے ہبہ کی تھی۔ یہ ہبہ ۲۵ سال قبل ہوا تھا

Upon perusal of statements made by the witnesses who appeared on behalf of the plaintiffs it becomes clear that the plaintiffs claimed declaration of title in respect of the suit land on the basis of oral transaction of gift and thus they could not be allowed to urge on the basis of unsanctioned Mutation No.1866 that in fact transaction of transferring the suit land was sale but inadvertently in the plaint it was written as gift (Hiba). It is undoubtedly true that the suit was one for declaration and after the proposed amendment it would continue to be a declaratory suit. In that sense, there would be no change in the character of the suit, but the character of plaintiffs' claim would be totally changed. Thus, amendment sought to be made, at the fag end of the trial particularly after making final arguments and at the stage of announcement of judgment, could not be allowed to be made as it would totally change the character of the plaint and basis of claim qua suit land, though not character of the suit, and such amendment would certainly prejudice the defendant (present petitioner) in his defence which he had already filed in pursuance of the case set up by the plaintiffs in their plaint. This aspect of the matter was not considered by the Revisional Court and thus it fell into error while passing the impugned order dated 03.06.2015.

5. In the sequel this petition is accepted, order dated 03.06.2015 passed by Addl. District Judge is set aside and declared to have been passed without lawful authority and of no legal effect and consequently the order of the Trial Court dated 01.07.2014 is restored.

**(SHAHID WAHEED)
JUDGE**

Approved for reporting

Judge