

In the High Court of Punjab and Haryana at Chandigarh

CR No.1655 of 2011 (O&M)
Date of decision: 09.07.2015

Harsh Bajaj

.....Petitioner

Versus

Om Parkash Bajaj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Kulwant Singh,Advocate
for the petitioner.

Mr.J.K.Goel,Advocate for the
respondents No. 1 to 4.

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SABINA, J

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 26.2.2011 (Annexure P5) whereby application moved by the plaintiff for permission to amend the plaint, was allowed.

Learned counsel for the petitioner has submitted that the plaintiff had filed the suit for declaration to the effect that she was entitled to half share in the house in question. When the case was listed for arguments, at that stage,an application had been filed by the plaintiff for permission to amend the plaint and claim the relief of joint possession. By doing so, plaintiff had virtually changed the nature of the suit. Learned counsel has further submitted that once

the trial had commenced, plaintiff could not be permitted to amend the plaint. In support of his arguments, learned counsel has placed reliance on Vidyabai and others vs. Padmalatha and another 2009(1) RCR(Civil) 763, Rahim Din and others vs. Faqir Mohammad 2008 (4) RCR(Civil) 187 and Bahadur Singh and another vs. Avtar Singh 2007(3) RCR Civil 44.

Learned counsel for respondents No. 1 to 4, on the other hand, has opposed the petition and has submitted that due to inadvertence, the relief of joint possession could not be claimed by the plaintiff while filing the plaint. Respondents No.1 to 4 have already led their evidence and will not lead any evidence after the amendment of the plaint.

Order 6 Rule 17 of the Code of Civil Procedure, 1908 reads as under:-

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, as per the above provision, the Court has ample power to allow either party to alter or amend its pleadings before the

commencement of the trial. However, once the trial has commenced, the Court can not allow the party to alter or amend its pleadings provided the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

In the present case, plaintiff-Leela Wanti was the mother-in-law of the petitioner-Harsh Bajaj. Sunil Kumar Bajaj was the owner of the house in question. Sunil Kumar Bajaj died on 2.1.2001. After the death of Sunil Kumar Bajaj, Leel Wanti filed the suit for declaration that she was owner of the house in question to the extent of half share and challenged the Will dated 14.12.2000 set up by the petitioner. During the pendency of the suit, Leela Wanti died and respondents No. 1 to 4 were brought on record being her legal heirs. Respondents No. 1 to 4 moved an application for permission to amend the plaint. The case of respondents No. 1 to 4 was that due to inadvertence, relief of joint possession could not be claimed by the plaintiff at the time of filing of the suit.

In the facts and circumstances of the present case, learned trial Court rightly came to the conclusion that the amendment sought by the petitioner was necessary for deciding the controversy between the parties. It has been stated by the learned counsel for respondents No. 1 to 4 that despite due diligence, relief of joint possession could not be pleaded by the plaintiff, although, evidence in this regard has been duly led by the plaintiff. It has already been held by the trial Court, while passing the impugned order, that respondents No. 1 to 4 would not be permitted to lead any further

evidence on account of amendment sought by them in the plaint as the case was already fixed for rebuttal evidence and arguments. In these circumstances, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner as they are based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

July 09,2015
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