

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 1735 of 2015
Date of Decision: 11.3.2015.

Saroj

.....Petitioner

Versus

Mukesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.K.Khubbar, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 4.3.2015 (Annexure P-2) whereby application moved by her under order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the written statement, was dismissed.

Learned counsel for the petitioner has submitted that the pleas now sought to be taken up by the petitioner, were not available at the time of filing of the written statement. Hence, the amendments sought by the petitioner in the written statement, were very necessary for proper adjudication of the case.

Order 6 Rule 17 CPC reads as under:-

Amendment of pleadings:- *"The Court may at any stage of 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 amendment of the pleadings as may be necessary for the purpose of determining the question in controversy between the parties. However, 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 parties could not have raised the matter before commencement of the trial.

In the present case, trial had already commenced. Respondents No. 1 to 3-plaintiffs filed suit for declaration to the effect that they were owners in possession of the land to the extent of 1/5th share on the basis of judgment and decree dated 27.7.1992 and the sale deed dated 3.3.2009 in favour of the petitioner was illegal, null and void. Petitioner filed her written statement. Thereafter, issues were framed. Application under Order 6 Rule 17 CPC was moved by the petitioner at the stage when the case was listed before the Trial Court for defendants evidence. Thus, the trial had already commenced when the application was moved by the petitioner for permission to amend the written statement.

By way of amendment, petitioner wants to incorporate the plea that the partition proceedings have already been concluded by the Court of A.C. Ist Grade on 17.3.2010. However,

at the time of filing of the written statement, petitioner had admittedly not taken up the plea that partition proceedings were pending before the Court of A.C. Ist Grade. Thus, the fact that the partition proceedings were pending before the Court of A.C. Ist Grade, was well within the knowledge of the petitioner but the said plea was not taken at the time of filing of the written statement. In these circumstances, the learned Trial Court rightly held that the amendment sought by the petitioner in this regard in the written statement, was liable to be disallowed.

Further, by way of amendment, petitioner wants to take up the plea that she was a bonafide purchaser. Petitioner was well aware that the sale deed executed in her favour was challenged in the suit and the plea now sought to be taken that the petitioner was a bonafide purchaser, should have been taken by the petitioner at the time of filing of the written statement.

In the facts and circumstances of the present case, the learned Trial Court had rightly dismissed the application moved by the petitioner under Order 6 Rule 17 CPC for permission to amend the written statement.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 11, 2015
Gurpreet