

In the High Court of Punjab and Haryana at Chandigarh

CR No. 1932 of 2015

Date of decision: 19.03.2015

Sukhdev Singh

.....Petitioner

Versus

Harvinder Pal Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.N.S.Wahniwal, Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition challenging the order dated 10.12.2014 (Annexure P1) whereby application moved by the respondent under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short), was allowed.

Learned counsel for the petitioner has submitted that once the trial had commenced, respondent could not be allowed to amend the plaint. In support of his arguments, learned counsel has placed reliance on Sunil and others vs. Jai Prakash and another 2013(1)PLR 465 wherein it was held as under:-

“Contention raised by counsel for the respondents that fault was of the counsel of the respondents/plaintiffs and therefore, they should not suffer on account of fault of their counsel cannot be accepted because no such plea was even raised in

the amendment application Annexure P/3. It has nowhere been pleaded in the amendment application that all the facts were narrated to the counsel who, however, did not take this plea in the original plaint. Even otherwise, on the ground of alleged fault of counsel, amendment cannot be allowed because if amendment is allowed on this ground, then no application for amendment of pleading can be dismissed because in every case, such a ground can be taken to seek amendment of the pleading.

In the instant case, amendment application was moved after commencement of the trial of the suit. In view of Order 6 Rule 17 of the Code of Civil Procedure (in short, CPC), amendment of pleading could not be allowed after commencement of trial. In the instant case, it cannot be said that even after exercise of due diligence, plaintiffs could not have raised this plea before commencement of trial. On the contrary, if the respondents had exercised even slightest diligence, they could have taken this plea much before commencement of trial because this fact of construction raised by the defendants in part of the suit land was specifically pleaded in the written statement. The plaintiffs should have pleaded this fact in the plaint itself but they did not do so and thus, suppressed this material fact in the plaint. In replication, it is submitted by counsel for the respondents, it has been pleaded that the aforesaid construction is illegal. Thus, the said construction pointedly came to the notice of the plaintiffs from the written statement of the defendants and the

said plea was responded to by the plaintiffs in the replication, but inspite thereof, even at that stage, the plaintiffs did not think it appropriate to seek amendment of plaint for claiming relief of mandatory injunction as well for removal of the said construction. Consequently, in these circumstances, proposed amendment of plaint sought long after commencement of trial could not be allowed.”

Respondent has filed the suit for declaration to the effect that she was owner in possession of the suit land to the extent of her share. A perusal of the plaint (Annexure P2) reveals that it was the case of the plaintiff that she has not executed sale deed in favour of defendant No.1-Amarjit Kaur. During the pendency of the suit, respondent moved an application for permission to amend the plaint. By way of amendment, respondent wants to add in the head note of the plaint as well as in the prayer clause that a declaration be granted to the effect that the sale deed dated 8.2.2008 was illegal, null and void and was a *sham* transaction.

Order 6 Rule 17 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.”

In view of the above provision, the Court has ample power to allow any party to amend its pleadings before the commencement of the trial. However, once the trial has commenced, the Court can not allow the party to 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, the plea of the respondent is that the petitioner intended to file suit for declaration to the effect that she was owner in possession of the suit property and had also challenged the sale deed dated 8.2.2008. She had signed the pleadings under the bona fide impression that her earlier counsel must have challenged the sale deed also. Moreover, vide order dated 26.10.2012, she had been ordered to affix the requisite court fee as the Court has held that she has challenged the sale deed. Thus, in the present case, amendment sought by the respondent will not change the nature of the suit. Respondent has already affixed the necessary court fee in order to enable her to challenge the sale deed dated 8.2.2008. It appears that, at the time of the drafting of the plaint, the counsel engaged by the respondent had failed to specifically pray that the sale deed dated 8.2.2008 be declared null and void.

In the facts and circumstances of the present case, learned trial Court had rightly allowed the application moved by the

respondent for permission to amend the plaint. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts. No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 19,2015
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