

In the High Court of Punjab and Haryana at Chandigarh

CR No. 2605 of 2013

Date of decision: 21.05.2015

Satnam Singh

.....Petitioner

Versus

Piara Singh through his LRs

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.R.K.Chauhan,Advocate
for the petitioner.
Mr.R.K.Dadwal,Advocate
for the respondent

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SABINA, J

Petitioner has filed this petition challenging the order dated 9.4.2013 (Annexure P4) whereby application moved by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the plaint, was dismissed.

Learned counsel for the petitioner has submitted that the application for permission to amend the plaint was filed on 19.11.2004 (Annexure P2) and the same remained pending for a number of years and was dismissed vide order dated 9.4.2013 (Annexure P4). By way of amendment, petitioner only wanted to mention the details of the previous litigation pending between the parties and mention correct khasra numbers. Learned counsel has further submitted that the petitioner has already led his evidence qua

the amendment sought by him and will not lead further evidence if the application for amendment of the plaint was allowed.

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that the application for amendment of the plaint had not been pressed by the petitioner for a long time and the same was rightly dismissed by the trial Court.

Order 6 Rule 17 CPC 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.

Petitioner has filed the suit for declaration to the effect that he was owner in possession of the suit land. The suit was filed

by the petitioner on 25.8.2004 and issues were framed on 27.9.2004.

Thereafter, application for permission to amend the plaint was filed by the petitioner on 19.11.2004. However, the application remained pending for a long time and was decided on 9.4.2013. By way of amendment, petitioner only wanted to incorporate the earlier litigation pending between the parties and wanted to give correct description of the suit property. Petitioner has already led his evidence with regard to the amendment sought by him and the learned counsel for the petitioner has submitted that the petitioner will not lead further evidence after the amendment of the plaint. Since the application for amendment of the plaint had been filed immediately after the framing of the issues, learned trial Court has erred in dismissing the application moved by the petitioner for permission to amend the plaint. Moreover, the proposed amendment will not change the nature of the suit as by way of amendment, petitioner only wants to bring on record the previous litigation pending between the parties and give correct description of the suit property.

Accordingly, this petition is allowed. Impugned order dated 9.4.2013 (Annexure P4) is set aside. Consequently, application moved by the petitioner for permission to amend the plaint is allowed. Petitioner has undertaken that he shall not lead any evidence after the amendment of the plaint.

**(SABINA)
JUDGE**

May 21, 2015
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