

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 3186 of 2015
Date of Decision: 12.5.2015.**

Raj Kumar

.....Petitioner

Versus

Sewa Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. V.D.Sharma, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 20.3.2015 (Annexure P-5) 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.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

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 either of the party to amend its pleadings which are necessary for the purpose of determining the real question in controversy between the parties. However, as per the proviso the application for amendment shall not be allowed after the trial has commenced.

Petitioner has filed suit for declaration that the adoption deed dated 6.7.1987 be declared null and void. After framing of the issues, the case was listed for evidence of the petitioner. Petitioner tendered his affidavit in his examination-in-chief and, thereafter, moved the application for permission to amend the plaint. By way of amendment, petitioner wants to challenge the decree dated 14.8.1989 passed in Civil Revision No. 80 of 10.12.1987. The learned Trial Court rightly dismissed the application moved by the petitioner for permission to amend the plaint as the decree, now sought to be challenged, was passed on 14.8.1989. The said decree was pleaded by the defendant in his written statement filed on 20.10.2011 whereas the application for amendment of the plaint was filed on 5.9.2014. Hence, it could not be said that the application had been filed with due diligence. Further, if the petitioner is permitted to challenge the decree dated 14.8.1989, it would amount to change of the nature of the suit.

In the facts and circumstances of the present case, no

ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 12, 2015
Gurpreet