

In the High Court of Punjab and Haryana at Chandigarh.

**C R No. 3345 of 2012
Decided on 23.1.2015**

Paramjit Kaur

--Petitioner

Vs.

Avtar Singh and another

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. V. M. Gupta, Advocate, for the petitioner

Mr.R.P..Kansal,Advocate, for the respondents

Rakesh Kumar Jain,J: (Oral)

This revision is against the order dated 18.10.2011 by which application filed by the petitioner for amendment of the plaint has been dismissed.

In brief, the plaintiff filed a suit for declaration that she is owner in possession of the property in dispute on the basis of a sale deed dated 22.9.2003 and the sale deed dated 21.6.2006 in favour of defendant No.1 is null and void.

The suit was filed on 21.7.2006, to which written statement was filed on 27.2.2007 and the issues were framed on 27.4.2007.

On 1.10.2010, the plaintiff filed the application for amendment of the plaint in order to challenge the agreement to sell dated 13.7.2011 and also the exparte decree dated 14.8.2004 on the basis of sale deed

executed by defendant No.2 in favour of defendant No.1. Defendant No.1. had obtained the exparte decree.

Learned trial Court dismissed the application only on the ground that since trial has commenced, therefore, at this stage, the application for amendment cannot be allowed.

Learned counsel for the petitioner has submitted that the application was filed only when the issues were framed and the evidence was not yet started. Therefore, it is submitted that the trial Court has committed an error in law in exercise of its jurisdiction in dismissing the application for amendment.

On the other hand, learned counsel for the respondents has submitted that the petitioner cannot be allowed to challenge the exparte decree dated 14.8.2004 in the present case as Order 21 Rule 101 of CPC bars a separate suit.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the order passed by the trial Court is patently erroneous and is liable to be set aside.

It is needless to mention that there are two parts of Order 6 Rule 17 of CPC. The first part deals with the situation where the application is filed when the trial has not commenced while the second part deals with the situation when the permission for amendment can be granted by the Court on the ground that despite due diligence, the said plea could not be incorporated in the original plaint/written statement.

In the present case, I am dealing with the first part of Order 6 Rule 17 of the CPC where only issues were framed when the application was filed and the trial had not commenced. Since the petitioner has

already challenged the sale deed dated 21.6.2006, therefore, it would be better if the petitioner is allowed to challenge the exparte decree as well because the sale in his favour is prior in time but after filing of the suit.

Accordingly, the present petition is allowed and the impugned order is hereby set aside.

23.1.2015
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(Rakesh Kumar Jain)
Judge